Using an *eruv* as a basis for redistricting is precisely the constitutional violation that Justices Souter and Kennedy described: If a legislative district is drawn to track the path of an *eruv*, then, by definition, the district is drawn according to religious lines to affirmatively cater to the Jewish community, which *itself* determines the *eruv*'s path—a "purposeful delegation on the basis of religion."[221] As described in Section I.B, the permissibility of government action in allowing both the establishment and maintenance of *eruvim* stems from the fact that the government's aura of neutrality remained intact despite (or because of) such actions.[222] The government's actions did not endorse the *eruv* or the Jewish religion, but merely accommodated a community's desire to remove impediments to its religious practices.[223] Such neutrality, however, is ruptured when an *eruv* is used as a redistricting basis. Of course, religious practices are not aided or accommodated by such an action. Rather, the creation of such a district serves to imbue a religiously significant jurisdictional demarcation[224] with political significance, raising the prospect and perception of governmental endorsement of religion.

But the roots of the unconstitutionality of such a district are deeper. By choosing to use the boundaries of an *eruv* as the contours of a legislative district, the state is delegating its line-drawing determination to a religious entity—the state, by definition, *follows* the boundaries that a religious community has set up for itself. This is a variant of the concern expressed by the majority in *Grendel's Den*, as a "power ordinarily vested in agencies of government"—drawing the

[221] *Id.*
[222] *See supra* Section I.B.
[223] *See supra* Section I.B; Tenafly Eruv Ass'n v. Borough of Tenafly, 309 F.3d 144, 176–77 (3d Cir. 2002) (holding that the perception of governmental endorsement of religion is unlikely when the government acts to accommodate Orthodox Jewish religious practice in maintaining an *eruv*).
[224] *See* Schragger, *supra* note 15, at 466 ("The eruv territorializes by defining a particular geography as normatively significant. It emphatically constitutes an act—albeit small—of jurisdictional arrogation."); *see also* BARBARA E. MANN, SPACE AND PLACE IN JEWISH STUDIES 138–39 (2012) ("[T]he eruv's effects are largely dependent on the belief that it exists. In a way that powerfully challenges even the most concrete forms of dwelling, the eruv transforms space into place. . . . It is undeniable to those who need it, dismissible to those who don't.").

boundaries of legislative districts—is being exercised by a religious group.[225] Or, to cast it in the terms of the *Kiryas Joel* plurality, using the *eruv* as a basis for redistricting "defin[es] a political subdivision . . . by a religious test, resulting in a purposeful and forbidden 'fusion of governmental and religious functions.'"[226]

Admittedly, the delegation here is not as clear-cut as the ones in *Grendel's Den* and *Kiryas Joel*, given the role played by government officials in the redistricting process. Both *Grendel's Den* and the *Kiryas Joel* plurality caution against the *sharing* of power amongst government and religious institutions.[227] Such a sharing has taken place in this scenario when a religious group determines, in the first instance, the path that district lines should take. Just as in the Pikesville example from the Introduction, in all likelihood, the impetus for using the *eruv* as a basis for a district's boundaries will come from the Jewish community itself,[228] given redistricters' inherently limited capacities.[229] In this framework, government officials are acquiescing and deferring to a community's self-defined boundaries, with true power in the hands of the community.[230]

Furthermore, the fact that the government retains authority over future changes of district boundaries should not militate against a finding of unconstitutionality should the *eruv* serve as a template for a district's boundaries. Just because district lines might be changed in the future does

[225] Larkin v. Grendel's Den, Inc., 459 U.S. 116, 122 (1982). Or, as the *Kiryas Joel* plurality put it, "a State may not delegate its civic authority to a group chosen according to a religious criterion." *Kiryas Joel*, 512 U.S. at 698 (plurality opinion).
[226] *Kiryas Joel*, 512 U.S. at 702 (plurality opinion) (quoting *Grendel's Den*, 459 U.S. at 126).
[227] *See Grendel's Den*, 459 U.S. at 127 ("The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions."); *Kiryas Joel*, 512 U.S. at 702 (plurality opinion) (describing a "forbidden 'fusion of governmental and religious functions.'" (quoting *Grendel's Den*, 459 U.S. at 126)).
[228] *See supra* notes 8–11 and accompanying text.
[229] *See* Mac Donald & Cain, *supra* note 175, at 611 ("Given that a finite number of commission members cannot possibly reflect all the nuanced, varied interests that arise in a large state redistricting, public input is critical to providing line-drawing guidance.").
[230] By definition, this delegated power is not being used in a religiously neutral manner—the express purpose of such a district is to grant representation and political power to Jewish communities. *See supra* note 120 and accompanying text.

not mean that present constitutional issues should be minimized—there would be no present guarantee of a religiously neutral exercise of power.[231] Of course, the delegations at issue in *Grendel's Den* and *Kiryas Joel* could have conceivably been revised and undone by the same legislative practices by which they arose. That legislative change in the redistricting context is more easily contemplated given its decennial nature should not change the constitutional analysis.

Moreover, the collective, communal action required to establish the *eruv*[232] serves to vitiate one of the concerns Justice Scalia raised in his *Kiryas Joel* dissent: It creates a distinction "between civil authority held by a church and civil authority held by members of a church."[233] Indeed, the Establishment Clause delegation concerns inherent in using an *eruv* as a basis for redistricting result in a constitutional violation, but merely taking a Jewish community into account as a community of interest is permissible[234]—hewing precisely to the divide envisioned by Justice Scalia. Constitutional concerns are only implicated when a religious group, not the government, effectively determines the shape of a legislative district: The mere fact that coreligionists live within a district is, to use a term, kosher.[235]

### C. Searching for a Standard

Having sketched the contours of the constitutional impermissibility of using the *eruv* as a basis for redistricting, one task remains: crafting a standard to determine when such an unconstitutional practice has occurred. Admittedly, this is a fraught task, and the nearly limitless

[231] *See Kiryas Joel*, 512 U.S. at 697 (plurality opinion).
[232] *See supra* Introduction.
[233] *See* Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 735 (1994) (Scalia, J., dissenting) ("Justice Souter's steamrolling of the difference between civil authority held by a church and civil authority held by members of a church is breathtaking.").
[234] *See supra* Section II.B.
[235] *See Kiryas Joel*, 512 U.S. at 708 ("We do not disable a religiously homogeneous group from exercising political power conferred on it without regard to religion."). As suggested by the Court in *Grendel's Den*, there remain nondelegative means by which such representation could be achieved. *See* Larkin v. Grendel's Den, Inc., 459 U.S. 116, 123–24 (1982); *cf. infra* Section III.C.

permutations of district shapes and degrees of following an *eruv*'s path frustrate attempts to set forth a clear, bright-line rule. Accordingly, the proper standard to employ here is analogous to that governing the consideration of race in redistricting: An Establishment Clause violation is present when a desire to follow the path of an *eruv* to grant political representation to a Jewish community predominates over traditional districting criteria in the drawing of legislative boundaries.[236] Of course, inquiries into predominance can be riddled with tangles,[237] but such a fact-based standard provides a needed measure of flexibility to adapt to the myriad possibilities contained within the districting process[238]—in addition to providing the benefit of doctrinal uniformity vis-à-vis considerations of race and religion.[239]

The main benefit, however, of the predominance standard in this context is that it can serve as a proxy for violations of both the *Lemon* test and Justice O'Connor's endorsement test. In *Kiryas Joel*, the plurality noted that the school district ran afoul of *Lemon*'s effect and entanglement prongs, much like the statute in *Grendel's Den*: "[T]he 'significant symbolic benefit to religion' associated with 'the mere appearance of a joint exercise of legislative authority by Church and

[236] *See* Bethune-Hill v. Va. State Bd. of Elections, 137 S. Ct. 788, 797 (2017) ("[A] plaintiff alleging racial gerrymandering bears the burden 'to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.' To satisfy this burden, the plaintiff 'must prove that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.'" (citation omitted) (quoting *Miller*, 515 U.S. at 916)).

[237] *See supra* note 174. Of course, tensions over predominance are not limited to voting rights jurisprudence. *See generally* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) (displaying differing views of the proper meaning of "predominance" in the class action context).

[238] *Cf.* Richard H. Pildes, *Principled Limitations on Racial and Partisan Redistricting*, 106 YALE L.J. 2505, 2507 (1997) ("Whatever the merits of more rigidly 'consistent' approaches in other institutional areas—approaches that argue for colorblindness or race-consciousness in all-or-nothing terms—within the legal system, contextual variations must be attended to if courts are to develop coherent, administrable legal doctrines."). For this reason, more evidence would be needed to determine whether the Maryland redistricting plan described in the Introduction violates the Constitution. *See supra* Introduction. Certainly, there is a plausible argument to be made that the reliance on the *eruv*, coupled with Professor Persily's statement that the new district contained most of Pikesville's *eruv*, is indicative of predominance. *See* Nov. 3 Meeting Video, *supra* note 13, at 12:45; *see also* Nov. 3 Meeting Transcript, *supra* note 13.

[239] *See* Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1870–71 (2012) (noting the "modest flexibility" provided by the *Shaw* line of cases).

State'" implied a "'primary' and 'principal' effect of advancing religion,"[240] and the delegation of governmental power to religious authorities "impermissibly entangle[ed] government and religion."[241] Though none of the *Kiryas Joel* opinions deal directly with Justice O'Connor's endorsement test, the "significant symbolic benefit to religion" described by the plurality[242] can be analogized to an endorsement of religion.[243]

The predominance inquiry works to measure the salience of the government's use of the *eruv* in redistricting. If traditional districting criteria predominate over considerations of the *eruv*, the salience of the use of the *eruv* in redistricting is low, lessening the likelihood that such a "significant symbolic benefit to religion"[244] will be found. However, were considerations of the *eruv* to predominate over traditional districting criteria, the salience of the *eruv*'s use would be high, thus increasing the likelihood of a perception that the government is conferring a benefit on religion, given the significance of the *eruv* to observant Jews.[245] In this manner, the predominance inquiry serves as a means by which harms comparable to those described in *Kiryas Joel* and *Grendel's Den* can be approximated.

This standard in no way compels the conclusion that these discrete and insular minorities will go unrepresented in the political process. It only cautions against one particular method of

[240] Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 697 (1994) (plurality opinion) (quoting Larkin v. Grendel's Den, Inc., 459 U.S. 116, 125–26 (1982)).
[241] *Id.* (citing *Grendel's Den*, 459 U.S. at 126–27). This quote and the previous quote were the *Kiryas Joel* plurality's characterizations of the issues inherent in the *Grendel's Den* statute, but the plurality noted that "[c]omparable constitutional problems inhere in the statute before us." *Id.*
[242] *Id.* (quoting *Grendel's Den*, 459 U.S. at 125–26).
[243] *See* Tenafly Eruv Ass'n v. Borough of Tenafly, 309 F.3d 144, 174 (3d Cir. 2002) ("[T]he endorsement test . . . dispenses with the 'entanglement' prong of the *Lemon* test and collapses its 'purpose' and 'effect' prongs into a single inquiry: would a reasonable, informed observer, *i.e.*, one familiar with the history and context of private individuals' access to the public money or property at issue, perceive the challenged government action as endorsing religion?" (citing Zelman v. Simmons-Harris, 536 U.S. 639, 654–55 (2002)).
[244] *Kiryas Joel*, 512 U.S. at 697 (quoting *Grendel's Den*, 459 U.S. at 125–26).
[245] *See supra* note 224 and accompanying text.

achieving such representation. Jewish communities remain able to seek communal representation through other advocacy channels.[246]

## Conclusion

As jurisdictions such as Maryland seek to include Jewish communities in their redistricting processes, the *eruv* can serve as an appealing and convenient way to create legislative districts that provide these communities with political representation.[247] While the desire to provide such representation is laudable (and constitutionally permissible[248]), state legislatures and redistricting commissions ignore the Establishment Clause implications of using the *eruv* in the redistricting process at their peril. When the *eruv*'s boundaries are used as a basis to draw district lines, the state delegates its discretionary line-drawing authority to organized religious communities, in violation of the Establishment Clause.[249] Of course, the particularities of an individual district's lines and composition will determine the presence of a constitutional violation.[250] Nevertheless, the potential for such a violation—and the concomitant potential for the politicization of religion and increased political division[251]—has heretofore gone unnoticed.

[246] *See* Jacob Kornbluh, *No 'Super Jewish' District, but Increased Orthodox Influence in New York's Capital*, FORWARD (Feb. 2, 2022), https://forward.com/news/481896/no-super-jewish-district-but-increased-orthodox-influence-in-new-yorks (describing both the successes and shortcomings of Orthodox Jewish efforts to achieve representation in New York's latest redistricting cycle).
[247] *See supra* Introduction.
[248] *See supra* Section II.B.
[249] *See supra* Sections III.A–B.
[250] *See supra* Section III.C.
[251] *See supra* Sections III.A–B.

## Applicant Details

| | |
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| Contact Phone Number | **646-428-4644** |

## Applicant Education

| | |
|---|---|
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| Date of BA/BS | **June 2017** |
| JD/LLB From | **Yale Law School**<br>**https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf** |
| Date of JD/LLB | **May 23, 2022** |
| Class Rank | **School does not rank** |
| Law Review/ Journal | **Yes** |
| Journal(s) | **Yale Journal of International Law** |
| Moot Court Experience | **Yes** |
| Moot Court Name(s) | **Jessup International Law Moot Court** |

## Bar Admission

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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March 14, 2022

The Honorable Lewis J. Liman
United States District Court for the Southern District of New York
Danial Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Liman:

I am a third-year student at Yale Law School, and I am writing to apply for a clerkship in your chambers. As a native New Yorker, I look forward to returning home after I graduate. I plan to practice in New York, and I am also particularly interested in clerking there.

My experiences at Yale will serve me well as a clerk. My work as a member of the school's Jessup International Law Moot Court team, my role as Professor George Priest's research assistant, and my time serving as an Executive Articles Editor on the *Yale Journal of International Law* have given me the opportunity to refine my legal research and writing skills. Perhaps the experience that has prepared me most for success as a clerk was my externship in the District of Connecticut United States Attorney's Office last semester. In this role, I drafted motions, prepared briefs and memoranda, and represented the Government in district court. I am comfortable working in a courtroom environment, and I am confident that the skills I have developed as a law student will make me an effective clerk.

I have enclosed my resume, transcript, and writing sample. Professors Amy Chua, Claire Priest, and George Priest will separately submit letters of recommendation on my behalf.

I would be happy to provide any additional information, and I would welcome the opportunity to interview with you.

Thank you for your consideration. I look forward to hearing from you.

Sincerely,
Simone

Enclosure

# SIMONE RIVERA

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## EDUCATION

**YALE LAW SCHOOL,** New Haven, Connecticut
J.D. expected June 2022
*Activities:* National Security Group, VP of Communications
*Yale Journal of International Law*, Executive Articles Editor
Yale Law School Jessup International Law Moot Court, Team Member
*Awards:* Best Memorial, U.S. Regional Round, Jessup International Law Moot Court Competition

**NORTHWESTERN UNIVERSITY**, Evanston, Illinois
Bachelor of Arts, *magna cum laude* in Political Science and Legal Studies, June 2017
*Honors:* Phi Beta Kappa
Legal Studies Departmental Honors
Dean's List (all quarters)
*Senior Thesis:* *An Evaluation of the Obama Administration's Legal Framework for Its Targeted Killing Program: The Focus, the Flaws, and the Fate of the Rule of Law*, awarded Legal Studies Thesis of Distinction
*Study Abroad:* Sciences Po, Paris, France, Fall 2015
*Activities:* Northwestern University Sailing Team, Team Member
Weinberg College of Arts and Sciences Student Advisory Board, Legal Studies Representative

## PUBLICATIONS

The American Bar Foundation. *Latinos by the Numbers: Exploring Demographic Trends in Immigration, Economic Attainment, Economic Vitality, and Political Participation in the Midwest, 2006-2015*. Chicago, 2016.

## EXPERIENCE

**United States Department of Justice,** U.S. Attorney's Office for the District of Connecticut, New Haven, CT *August 2021- Dec. 2022*
*Legal Extern*
Assisted in trial preparation by drafting motions and sentencing memoranda. Prepared briefs and memoranda of law, and, with supervision from the Office, represented the United States in court in the District of Connecticut.

**Gibson, Dunn & Crutcher LLP,** New York, NY *May 2021- August 2021*
*Summer Associate*
Assisted the litigation department with numerous legal research and writing projects, which spanned the White Collar, Intellectual Property, Copyright, General Commercial Litigation, Pro Bono, and International Arbitration practice areas.

**United States Department of Defense**, Office of Military Commissions, Washington D.C. *June 2020- August 2020*
*Legal Intern in the Office of the Chief Prosecutor*
Aided the OCP Trial Teams by authoring a memorandum on the applicable law in non-international armed conflicts in an attempt to discern the scope of the rights, duties, and protections afforded to military commission accused under U.S. and international law.

**Yale Law School,** New Haven, CT *May 2020- August 2020*
*Research Assistant for Professor George Priest*
Conducted a comparative analysis of states' informal economies. Compiled an extensive literature review and annotated bibliography on research related to the U.S. underground economy.

**New York County District Attorney's Office,** New York, NY *July 2017- June 2019*
*Trial Preparation Assistant*
Drafted legal documents, managed case schedules, and coordinated with witnesses, court staff, and defense counsels. Organized case files and exhibits for Grand Jury presentations and trials.

**Northwestern University,** Evanston, IL *June 2016- June 2017*
*Farrell Fellow Research Assistant in the Department of Political Science*
Developed an extensive report on the economic and organizational structure of the AMISOM intervention in Somalia.

## SKILLS AND INTERESTS

Moderate Spanish ability. New York City restaurant enthusiast, food blogger, and eager traveler.

# YALE LAW SCHOOL
## Office of the Registrar

# TRANSCRIPT RECORD

YALE UNIVERSITY

Date Issued: 03-FEB-2022

Record of: Simone Cruikshank Rivera Page: 1
Issued To: Simone Rivera
Parchment DocumentID: 37764983

Date Entered: Fall 2019

Candidate for : Juris Doctor JUN-2022

| SUBJ | NO. | COURSE TITLE | UNITS | GRD | INSTRUCTOR |
|---|---|---|---|---|---|
| **Fall 2019** | | | | | |
| LAW | 10001 | Constitutional Law I: Group 4 | 4.00 | CR | P. Gewirtz |
| LAW | 11001 | Contracts I: Section A | 4.00 | CR | A. Bagchi |
| LAW | 12001 | Procedure I: Section B | 4.00 | CR | D. Schleicher |
| LAW | 13001 | Torts and Regulation I: Sect B | 4.00 | CR | J. Witt |
| | | Term Units 16.00 | Cum Units 16.00 | | |
| **Spring 2020** | | | | | |
| LAW | 21068 | Antitrust | 4.00 | CR | G. Priest |
| LAW | 21300 | Criminal Law & Administration | 3.00 | CR | D. Kahan |
| LAW | 21454 | Intro Intl & Transnational Law | 4.00 | CR | H. Koh |
| LAW | 21520 | Comparative Constitutional Law | 2.00 | CR | W. Sadurski |
| LAW | 30212 | Advocacy in Intl Arbitration | 2.00 | CR | J. Buckley, B. Graham, J. Landy, A. Reyes |
| LAW | 40002 | Supervised Research | 1.00 | CR | H. Koh |
| | | Term Units 16.00 | Cum Units 32.00 | | |
| Sup. Research: Jessup International Law Moot Court. | | | | | |
| Spr2020 YLS classes completed after 3/6/20 graded only on a CR/F basis due to COVID-19. | | | | | |
| **Fall 2020** | | | | | |
| LAW | 20013 | Property | 4.00 | H | C. Priest |
| LAW | 20170 | Administrative Law | 4.00 | P | C. Jolls |
| LAW | 20300 | Professional Responsibility | 3.00 | P | D. NeJaime |
| LAW | 20396 | Intl Investment Law | 2.00 | H | W. Reisman |
| | | Term Units 13.00 | Cum Units 45.00 | | |
| **Spring 2021** | | | | | |
| LAW | 21040 | Business Organizations | 4.00 | P | M. Myers |
| LAW | 21209 | International Business Trans. | 4.00 | H | A. Chua |
| LAW | 21277 | Evidence | 4.00 | P | S. Carter |
| LAW | 40001 | Supervised Research | 3.00 | H | C. Priest |
| Supervised Analytic Writing | | | | | |
| | | Term Units 15.00 | Cum Units 60.00 | | |
| Sup. Research: Towards Greater Privacy and Profit: The Case for Establishing Data Ownership Through the Promulgation of an International Model Law. | | | | | |
| **Fall 2021** | | | | | |
| LAW | 20259 | Constitutional Litigation Sem. | 2.00 | H | G. Calabresi, J. Walker |
| LAW | 20448 | Federal Courts | 4.00 | P | C. Vazquez |
| LAW | 30193 | ProsecutnExtrnshp&Instruction | 3.00 | H | K. Stith, M. Donovan, J. Francis, H. Cherry S. Garbarsky |
| LAW | 30218 | Advanced Written Advocacy | 3.00 | H | N. Messing |

********** CONTINUED ON PAGE 2 **********



JUDITH CALVERT, REGISTRAR

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# YALE LAW SCHOOL
Office of the Registrar

TRANSCRIPT
RECORD

YALE UNIVERSITY

Date Issued: 03-FEB-2022

Record of: Simone Cruikshank Rivera
Level: Professional: Law (JD)



| SUBJ | NO. | COURSE TITLE | UNITS | GRD | INSTRUCTOR |
|---|---|---|---|---|---|
| Institution Information continued: | | | | | |
| | | Term Units 12.00 Cum Units 72.00 | | | |
| IN PROGRESS WORK | | | | | |
| Spring 2022 | | | | | |
| LAW | 21066 | Securities Regulation | 3.00 | | J. Macey |
| LAW | 21227 | Legislation | 3.00 | | A. Gluck |
| LAW | 21258 | ComparativeCrimLawFairTrials | 2.00 | | R. Coffey |
| LAW | 21397 | Corporate Litigation Seminar | 2.00 | | K. Schwartz |
| LAW | 21710 | Legal Writing II | 2.00 | | N. Messing |
| LAW | 40001 | Supervised Research | 2.00 | | A. Chua |
| | | In Progress Units 14.00 | | | |

Sup. Research: The "Micro" Moment: An Exploration of Technology's Effect on Socialization Patterns and the Resulting Need to Regulate Social Media Algorithms.

********** END OF TRANSCRIPT **********



JUDITH CALVERT, REGISTRAR

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**YALE LAW SCHOOL**
P.O. Box 208215
New Haven, CT 06520

## EXPLANATION OF GRADING SYSTEM

*Beginning September 2015 to date*

| | |
|---|---|
| **H**ONORS | Performance in the course demonstrates superior mastery of the subject. |
| **P**ASS | Successful performance in the course. |
| **L**OW **P**ASS | Performance in the course is below the level that on average is required for the award of a degree. |
| **CR**EDIT | The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis. |
| **F**AILURE | No credit is given for the course. |
| **CRG** | Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement. |
| **RC** | Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union. |
| **T** | Ungraded transfer credit for work done at another law school. |
| **TG** | Transfer credit for work completed at another law school; counts toward graded unit requirement. |
| **EXT** | In-progress work for which an extension has been approved. |
| **INC** | Late work for which no extension has been approved. |
| **NCR** | No credit given because of late withdrawal from course or other reason noted in term comments. |

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

*For Classes Matriculating 1843 through September 1950*

80 through 100 = Excellent
73 through 79 = Good
65 through 72 = Satisfactory
55 through 64 = Lowest passing grade
0 through 54 = Failure

To graduate, a student must have attained a weighted grade of at least 65.

*For Classes Matriculating September 1951 through September 1955*

E = Excellent
G = Good
S = Satisfactory
F = Failure

To graduate, a student must have attained a weighted grade of at least Satisfactory.

*For Classes Matriculating September 1956 through September 1958*

A = Excellent
B = Superior
C = Satisfactory
D = Lowest passing grade
F = Failure

To graduate, a student must have attained a weighted grade of at least D.

*From September 1959 through June 1968*

A = Excellent
B+
B = Degrees of Superior
C+
C = Degrees of Satisfactory
C-
D = Lowest passing grade
F = Failure

To graduate a student must have attained a weighted grade of at least D.

*From September 1968 through June 2015*

H = Work done in this course is significantly superior to the average level of performance in the School.
P = Successful performance of the work in the course.
LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.

CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis.
F = No credit is given for the course.

RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
EXT = In-progress work for which an extension has been approved.
INC = Late work for which no extension has been approved.
NCR = No credit given for late withdrawal from course or for reasons noted in term comments.

CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
T = Ungraded transfer credit for work done at another law school.
TG = Transfer credit for work completed at another law school; counts toward graded unit requirement.
*Provisional grade.

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Print Date: 07/10/2018

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Confer Date: 06/16/2017
Degree Honors: Magna Cum Laude
Plan: Political Science Major
Plan: Legal Studies Major

### Beginning of Undergraduate Record

#### 2013 Fall (09/24/2013- 12/13/2013)

Program: Weinberg College of Arts & Sci
Plan: Undeclared Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| ENGLISH | 101-6 | Freshman Seminar | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Representations of Violence | | | | |
| POLI_SCI | 250-0 | Intro to Comparative Politics | 1.000 | 1.000 | A- | 3.700 |
| SLAVIC | 210-2 | Intro to Russian Literature | 1.000 | 1.000 | A- | 3.700 |
| SPANISH | 121-1 | Intermediate Spanish | 1.000 | 1.000 | A- | 3.700 |

| | | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|---|
| Term GPA | 3.775 | Term Totals | 4.000 | 4.000 | 4.000 | 15.100 |

#### 2014 Winter (01/06/2014- 03/21/2014)

Program: Weinberg College of Arts & Sci
Plan: Undeclared Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| HISTORY | 103-6 | Freshman Seminar | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Africa in Fiction & Film | | | | |
| INTL_ST | 290-0 | Topics in Int'l Studies | 1.000 | 1.000 | A- | 3.700 |
| Course Topic: | | Int'l Dev: Issues and Practice | | | | |
| LEGAL_ST | 206-0 | Law and Society | 1.000 | 1.000 | A- | 3.700 |
| SPANISH | 121-2 | Intermediate Spanish | 1.000 | 1.000 | A- | 3.700 |

| | | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|---|
| Term GPA | 3.775 | Term Totals | 4.000 | 4.000 | 4.000 | 15.100 |

#### 2014 Spring (03/31/2014- 06/13/2014)

Program: Weinberg College of Arts & Sci
Plan: Undeclared Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| INTL_ST | 390-0 | Topics: International Studies | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Why Nations Succeed | | | | |
| LEGAL_ST | 376-0 | Topics in Legal Studies | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | The Constitution, Then and Now | | | | |
| SPANISH | 121-3 | Intermediate Spanish | 1.000 | 1.000 | A | 4.000 |

| | | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|---|
| Term GPA | 4.000 | Term Totals | 3.000 | 3.000 | 3.000 | 12.000 |

#### 2014 Fall (09/23/2014- 12/12/2014)

Program: Weinberg College of Arts & Sci
Plan: Undeclared Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| LATINO | 393-0 | Latina/o Text & Representation | 1.000 | 1.000 | A- | 3.700 |
| Course Topic: | | 21st Cent. Latina/o Literature | | | | |
| POLI_SCI | 240-0 | Intro International Relations | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 307-0 | Deportation Law and Politics | 1.000 | 1.000 | B+ | 3.300 |
| Course Topic: | | Deportation Law & Politics | | | | |
| POLI_SCI | 345-0 | National Security | 1.000 | 1.000 | A | 4.000 |

| | | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|---|
| Term GPA | 3.750 | Term Totals | 4.000 | 4.000 | 4.000 | 15.000 |

#### 2015 Winter (01/05/2015- 03/20/2015)

Program: Weinberg College of Arts & Sci
Plan: Political Science Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| GEN_CMN | 102-0 | Public Speaking | 1.000 | 1.000 | A | 4.000 |
| LEGAL_ST | 308-0 | Sociology of Law | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 310-0 | Methods of Political Inference | 1.000 | 1.000 | A- | 3.700 |
| POLI_SCI | 332-0 | Constitutional Law I | 1.000 | 1.000 | A- | 3.700 |

| | | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|---|
| Term GPA | 3.850 | Term Totals | 4.000 | 4.000 | 4.000 | 15.400 |

#### 2015 Spring (03/30/2015- 06/12/2015)

Program: Weinberg College of Arts & Sci
Plan: Political Science Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| EARTH | 103-0 | Geologic Hazards | 1.000 | 1.000 | A- | 3.700 |
| LING | 260-0 | Words & Sentences | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 230-0 | Intro: Law in Political Arena | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 342-0 | International Organizations | 1.000 | 1.000 | A- | 3.700 |

| | | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|---|
| Term GPA | 3.850 | Term Totals | 4.000 | 4.000 | 4.000 | 15.400 |

#### 2015 Summer (06/22/2015- 08/28/2015)

Program: Weinberg College of Arts & Sci
Plan: Political Science Major
Plan: Legal Studies Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| CFS | 394-1 | Legal Culture & Process | 2.000 | 2.000 | A | 8.000 |
| CFS | 394-2 | Contemporary Issues in Law | 2.000 | 2.000 | A | 8.000 |

**Northwestern University**
**633 Clark Street**
**Evanston, IL 60208**
**United States**

**Name:** Rivera,Simone Cruikshank
**Student ID:** 2788550



## Official Undergraduate Transcript

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 Term Totals | 4.000 | 4.000 | 4.000 | 16.000 |

**2015 Fall (09/21/2015- 12/12/2015)**

Program: Weinberg College of Arts & Sci
Plan: Political Science Major
Plan: Legal Studies Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| FRENCH | 199-SA | Language and Culture | 2.000 | 2.000 | A | 8.000 |
| POLI_SCI | 363-SA | Political Economy of the EU | 1.000 | 1.000 | A- | 3.700 |
| Course Topic: | | Taught in Paris | | | | |
| POLI_SCI | 364-SA | France and the European Union | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Taught in Paris | | | | |
| POLI_SCI | 365-SA | Decision Making in the EU | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Taught in Paris | | | | |
| POLI_SCI | 366-SA | Dynamics of Law Making in EU | 1.000 | 1.000 | A | 4.000 |

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Term GPA | 3.950 Term Totals | 6.000 | 6.000 | 6.000 | 23.700 |

**2016 Winter (01/04/2016- 03/19/2016)**

Program: Weinberg College of Arts & Sci
Plan: Political Science Major
Plan: Legal Studies Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| HISTORY | 300-0 | New Lectures in History | 1.000 | 1.000 | A- | 3.700 |
| Course Topic: | | Jews/Muslims-Islamic Mdle Age | | | | |
| LEGAL_ST | 318-1 | Legal & Constitutional History | 1.000 | 1.000 | A- | 3.700 |
| POLI_SCI | 395-0 | Political Research Seminar | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Race, Place, and Space in Demo | | | | |
| RELIGION | 350-0 | The Qur'an | 1.000 | 1.000 | A | 4.000 |

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Term GPA | 3.850 Term Totals | 4.000 | 4.000 | 4.000 | 15.400 |

**2016 Spring (03/29/2016- 06/11/2016)**

Program: Weinberg College of Arts & Sci
Plan: Political Science Major
Plan: Legal Studies Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| INTL_ST | 390-0 | Topics: International Studies | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Dilemmas of Am. Power | | | | |
| LING | 250-0 | Sound Patterns in Human Lang | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 333-0 | Constitutional Law II | 1.000 | 1.000 | A | 4.000 |

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 Term Totals | 3.000 | 3.000 | 3.000 | 12.000 |

**2016 Fall (09/20/2016- 12/10/2016)**

Program: Weinberg College of Arts & Sci
Plan: Political Science Major
Plan: Legal Studies Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| LEGAL_ST | 398-1 | Adv Research Seminar 1 | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 343-0 | Politics of International Law | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Politics of International Law | | | | |
| POLI_SCI | 395-0 | Political Research Seminar | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | Military Intervention | | | | |

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 Term Totals | 3.000 | 3.000 | 3.000 | 12.000 |

**2017 Winter (01/03/2017- 03/18/2017)**

Program: Weinberg College of Arts & Sci
Plan: Political Science Major
Plan: Legal Studies Major

| Course | | Description | Attempted | Earned | Grade | Points |
|---|---|---|---|---|---|---|
| LEGAL_ST | 398-2 | Adv Research Seminar 2 | 1.000 | 1.000 | A | 4.000 |
| POLI_SCI | 390-0 | Special Topics | 1.000 | 1.000 | A | 4.000 |
| Course Topic: | | War and Peace | | | | |

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Term GPA | 4.000 Term Totals | 2.000 | 2.000 | 2.000 | 8.000 |

Term Honor: Departmental Honors - Legal Studies

Term Honor: Phi Beta Kappa

Undergraduate Career Totals

| | | Attempted | Earned | GPA Units | Points |
|---|---|---|---|---|---|
| Cum GPA | 3.891 Cum Totals | 45.000 | 45.000 | 45.000 | 175.100 |

**Non-Course Milestones**

WCAS Writing Proficiency Requirement Completed
Program: Weinberg College of Arts & Sci

**End of Official Undergraduate Transcript**

# NORTHWESTERN UNIVERSITY
## Evanston, Illinois

**ACCREDITATION**
Northwestern University is accredited by the Higher Learning Commission (www.hlcommission.org). Other professional, college, school, and departmental accreditations are listed here:
http://www.registrar.northwestern.edu/academic_records/index.html
Northwestern University's CEEB code is 001739.

**OFFICE OF RECORD**
The Office of the Registrar, 633 Clark Street, Evanston, Illinois 60208, (847) 491-5234, fax: (847) 491-8458, www.registrar.northwestern.edu, issues transcripts of records for the following schools in the University. Such transcripts are a complete and chronological listing of all courses attempted in any of the schools listed.

Bienen School of Music
Dental School (closed 2001)
The Graduate School
McCormick School of Engineering and Applied Science
Graduate Nursing School (closed 1990)
Physician Assistant Program
Kellogg School of Management
School of Communication (formerly Speech)
School of Education and Social Policy
Weinberg College of Arts and Sciences
Medill School of Journalism, Media, Integrated Marketing Communications
Prosthetics-Orthotics (Master's program only)

The Office of the Dean/Director of each school/program listed below issues transcripts of records for these units. These transcripts must be requested separately and in addition to any transcripts from other Northwestern schools.

Northwestern Pritzker School of Law (312) 503-8464, www.law.northwestern.edu
Northwestern University in Qatar 974-4454-5072, www.qatar.northwestern.edu
Feinberg School of Medicine (312) 503-1369 www.feinberg.northwestern.edu
School of Professional Studies (312) 503-6950 www.sps.northwestern.edu
Physical Therapy (312) 908-8160 www.feinberg.northwestern.edu/sites/pthms/
Prosthetics-Orthotics (certificates) (312) 503-5700 www.nupoc.northwestern.edu/

**ACADEMIC CALENDARS**
Northwestern University offers programs on numerous calendars. Unless listed specifically below, the calendar on this transcript is a quarter system consisting of three quarters lasting approximately 10 weeks and one summer session lasting 10-11 weeks. Terms may include shorter sessions. The Executive MBA Program through the Kellogg School of Management is an exception with class meetings on designated weekends during terms corresponding to the quarter calendar.

Northwestern University in Qatar operates on a traditional semester calendar consisting of two terms each lasting 16 weeks and one summer term.

The Physician Assistant Program operates on a trimester calendar consisting of three terms each lasting 16 weeks.

The Physical Therapy Program operates on a semester calendar consisting of three terms each lasting 16 weeks.

The Prosthetics-Orthotics master's program uses a course unit system in which a 1 in the earned and attempted column = 1-unit course. For the purpose of transfer credit, one unit should be considered to be the equivalent of four quarter hours or 2 2/3 semester hours.

**CREDIT**
For quarter-based programs, in September 1969 NU began using a course unit system in which a 1 in the earned and attempted column = 1-unit course. For the purpose of transfer credit, one unit should be considered to be the equivalent of **four quarter hours or 2 2/3 semester hours.**

Prior to 2006 the Summer Session was based on a semester system and credits taken in that context should be considered to be the equivalent of four quarter hours or three semester hours.
*For an explanation of credits earned in quarter-based programs prior to 1969: http://www.registrar.northwestern.edu/academic_records/index.html*

The Physician Assistant program uses a trimester hour credit measure in which each credit hour corresponds to an hour of meeting time for each week of a 16-week trimester.

The Physical Therapy program uses a semester hour credit measure in which each credit hour corresponds to an hour of meeting time for each week of a 16-week semester.

The Prosthetics-Orthotics master's program uses a course unit system in which a 1 in the earned and attempted column = 1 course. For the purpose of transfer credit, one course should be considered to be the equivalent of four quarter hours or 2 2/3 semester hours.

Northwestern University in Qatar uses a course unit system in which a 1 in the earned and attempted column = 1-unit course. For the purposes of transfer credit, one unit should be considered to be the equivalent of four semester hours.

**GRADE POINT AVERAGE (GPA)**
All courses attempted are recorded on the transcript and used in the GPA calculation. GPA is computed by taking the total grade points divided by the attempted units. NR, T, TR, P, N, K, S, U, and W grades are not included in GPA calculations.

Northwestern University does not calculate major GPAs nor does it rank its students.

**EXPLANATION OF GRADE POINTS AND GRADES**
*For grade categories and years not represented below visit: www.registrar.northwestern.edu/academic_records/index.html*

**Note: GPAs are not calculated on official graduate and professional transcripts.**

**ABC GRADING SCALE**

| Grade Points | Grade | Description |
|---|---|---|
| 4.0 | A | Excellent |
| 3.7 | A- | |
| 3.3 | B+ | |
| 3.0 | B | Good |
| 2.7 | B- | |
| 2.3 | C+ | |
| 2.0 | C | Satisfactory |
| 1.7 | C- | |
| 1.0 | D | Poor but passing |
| 0.0 | F | Fail |
| 0.0 | X | Missed final exam |
| 0.0 | Y | Work incomplete |

**BY SCHOOL, WHEN THE GRADE RUBRIC ABOVE IS APPLICABLE**

| | |
|---|---|
| Undergraduate Programs | September 1982 - present |
| Bienen School of Music (graduate programs) | January 2005 – present |
| School of Communication (graduate programs) | September 2005 - present |
| School of Education and Social Policy (graduate programs – D grade not used) | March 2005 - present |
| The Graduate School (D grade not used) | September 2004 - present |
| Medill School of Journalism, Media, Integrated Marketing Communications (graduate programs – D grade not used) | October 1986 - present |
| McCormick School of Engineering and Applied Science (graduate programs) | September 1996 - present |

**GRADE POINTS AND GRADES USED BY KELLOGG SCHOOL OF MANAGEMENT (non-executive MBA Programs)**

| Grade Points | Grade | Description |
|---|---|---|
| 4.0 | A | Excellent |
| 3.0 | B | Good |
| 2.0 | C | Satisfactory |
| 1.0 | D | Poor but passing |
| 0.0 | F | Fail |
| 0.0 | X | Missed final exam |
| 0.0 | Y | Work incomplete |

**TRANSCRIPT NOTATIONS AND ABBREVIATIONS CURRENTLY IN USE**

| | |
|---|---|
| HP | High Pass |
| K | Indicates work in progress° |
| LP | Low Pass |
| N | No grade, no credit° |
| NR | No grade Reported by Instructor |
| P | Pass with credit° |
| S | Satisfactory (non-credit course) |
| T | Transfer grade° (Spring Quarter 1969-70, full academic credit) |
| TR | Transfer grade° (Qatar Campus) |
| U | Unsatisfactory (non-credit course) |
| V | Visitor (auditor) |
| W | Withdrew - with permission |
| X | Absent from final examination°° |
| Y | Incomplete - Additional work required°° |
| ° | Not included in either the quarterly or the cumulative grade point average |
| °° | Carries zero grade points and included in calculation of GPA. Both the quarterly and cumulative GPA are changed if a final grade is reported |

**TRANSCRIPT SYMBOLS**

| | |
|---|---|
| * | Grades received by special report |
| # | Duplication |
| ## | Not applicable toward degree |

*For transcript notations and symbols not described here: http://www.registrar.northwestern.edu/academic_records/index.html*

**DEGREES AWARDED**
For a complete list of degrees awarded:
www.registrar.northwestern.edu/academic_records/index.html

**TRANSFER CREDIT**
Undergraduate records document articulated transfer credit by listing the institution of record and a T grade for each approved course. Grades for work transferred from another institution are not recorded. If such grades are needed the student must request a transcript directly from the awarding institution.

**STATUS**
Students should be regarded as in good academic standing unless otherwise noted. Each unit devises a probation/suspension/withdrawal policy, as well as academic eligibility to re-enroll after an absence.

**COURSE NUMBERING SYSTEM**

| | |
|---|---|
| A/100 level | Courses primarily for freshmen and sophomores, usually without college prerequisite. |
| B/200 level | Courses primarily for sophomores and juniors, usually with the prerequisite of an A/100 level course in the same or a related department. |
| C/300 level | Courses primarily for upperclassmen and graduates, often with the prerequisites of an A/100 and/or B/200 level course in the same or a related department. |
| D/400 level | Courses or seminars primarily for graduates, in which the major part of the work is not research. |
| E/500 level | Courses for graduates only; seminars in which the work is primarily research, or special research by the individual student under faculty direction. |

**COURSE SUBJECTS AND DESCRIPTIONS**
For more details: www.northwestern.edu/caesar/

This Transcript Key was last updated in September 2016.

March 14, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I understand that Simone Rivera is applying to your chambers for a judicial clerkship. Simone is a dazzlingly smart, unimaginably hardworking, irresistibly likeable young woman – one of my favorite students and in my opinion one of the best writers in Yale Law School's Class of 2022 – and I am writing to give hermy highest possible recommendation.

Simone was one of 80 students I taught in my International Business Transactions class in Spring 2021. Despite the large size of the class (and the fact that I taught the class "hybrid" style, with half the class attending by Zoom), Simone stood out from her peers. Because I regularly cold call students, I quickly realized that Simone *always* knew the correct answer when I called on her, even when no one else in the class did. Not only that, she could always articulate it with pithiness and precision. Simone's comments and questions in class impressed me as well; they always reflected not just razor-sharp analytical skills and a prodigious work ethic, but also unusual insight and excellent judgment. Law and doctrinal analysis seem almost to come naturally for Simone, and she has amazing legal instincts. I should add that Simone had a rare perfect attendance record and always showed up early for class; she has a refreshing sense of respect and responsibility. She also has a lively, curious, associative mind and is always wonderfully eager to learn. Simone's final paper for the course was outstanding – one of the best in the class – researched with excruciating care, rigorously analyzed, and elegantly written. Simone received an Honors as her final grade.

It's worth emphasizing that Simone is an exceptionally strong legal writer with an unusual amount of experience already her belt. Before coming to Yale Law School, she spent two years working in the Trial Division of the New York County District Attorney's Office. In her role as a trial preparation assistant, Simone was responsible for aiding assistant district attorneys from the outset of their investigations through the culmination of their cases, helping draft search warrant affidavits, assisting with witness interviews, managing trial schedules, etc. – and her supervisors *raved* about her. Assistant District Attorney Shawn McMahon described Simone as "exceptional. She is goal-oriented, and as whip-smart as she is practical. She has become the 'go-to' paralegal, to whom other paralegals turn for help, and to whom other ADAs direct their own paralegals for help. . . . She is funny and well read. She has an optimism and energy about her that are contagious . . . I could not recommend her more enthusiastically."

After arriving at Yale, Simone immediately dove back into the litigation realm. In the Fall of her 1L year, she joined YLS's Jessup International Moot Court team, and was a core member of the group. Although the COVID pandemic unfortunately drew the competition to a premature close, Simone and her classmates were still able to compete in the regional rounds, where they won the prize for Best Memorial on behalf of our school. The following summer, Simone returned to prosecution work, this time in Washington, DC, where she worked as a legal intern in the Office of the Chief Prosecutor of Military Commissions – a subdivision of the Department of Defense (DOD). Simone spent most of her time at DOD researching and writing an extensive memorandum on the applicable law in non-international armed conflicts as opposed to international armed conflicts. This Fall, as a participant in Yale's Prosecution Externship, Simone is further honing her research and writing skills, working in the New Haven branch of the United States Attorney's Office for the District of Connecticut.

In terms of personality, Simone is delightful – mature, calm, level-headed, honest, quietly confident, respectful, and courageous, with a wonderful sense of humor. She is highly perceptive and has excellent judgment. She has an unparalleled work ethic, and will happily work around the clock – for many days in a row. Whenever I email her, she is instantly responsive. She actively seeks out criticism so that she can improve, and always responds gratefully, constructively, and cheerfully. She is also a deeply sincere, steadfast, and loyal person (not just instrumental), and I can't think of another law student I would trust more.

As I hope is clear, I like and admire Simone immensely, and I am absolutely confident that she would make an outstanding judicial clerk. I very much hope you will consider interviewing her – you won't be disappointed! Please do not hesitate to contact me if you have any questions. I would welcome the opportunity to be helpful in any way.

Thank you very much for your time and attention.

Sincerely yours,

Amy Chua
John M. Duff, Jr. Professor of Law
Yale Law School
amy.chua@yale.edu
(203) 432-8715

March 14, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Simone Rivera

Dear Judge Liman:

I am writing to enthusiastically recommend Simone Rivera for a clerkship in your chambers. Simone was a fantastic student at Yale Law School. She is an excellent writer and an original thinker. Simone was a student in an advanced Property class in which I limited enrollment to eighteen and required a research paper. Simone stood out as a deeply thoughtful and highly perceptive student who immediately grasped legal ideas and demonstrated a strong analytic mind. Simone was highly engaged with the materials and routinely offered insightful comments in class. Simone decided to continue working on her research paper in the spring term as a supervised research course. She worked independently, completed a tremendous amount of research, and wrote an excellent paper, for which she received an Honors and SAW credit, satisfying the major law school writing requirement.

Simone's paper addresses one of the central issues of our time: how the law treats data and data privacy. The paper offers a detailed, comparative examination of international regulation of data privacy. Her paper advocates for an international model law that would help with the country-by-country approach that adds costs and creates confusion today. The contribution of the paper is to survey the international spectrum of data regulation and to examine the benefits to be gained by a model law. Simone offers a sophisticated and nuanced explanation of the relevant issues and a sound policy proposal.

Simone's writing record exemplifies her hard work ethic and raw smarts. In sum, I believe that Simone is a fantastic candidate for a top clerkship. I predict that the judge who hires her will be thrilled with the decision.

Sincerely,

Claire Priest
Simeon E. Baldwin Professor
Yale Law School

Claire Priest - claire.priest@yale.edu - 203-432-4851

March 14, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Simone Rivera

Dear Judge Liman:

I am quite confident that Simone Rivera will make an excellent clerk, and I give her my highest recommendation.

Simone was a student in my Antitrust class. She spoke a few times in class, always making good points. She talked to me frequently during the class break (it was a two hour class) and after class, again with perceptive questions.

Most importantly, she worked for me as a Research Assistant. She did outstanding work. She pursued the questions I gave her with extreme diligence, far beyond what was normal or what I expected. I am certain she will do the same as a clerk. She is highly self-motivated and highly intelligent as well, anticipating and pursuing what I might have asked her to do. In 40 plus years at Yale Law School, she is the best Research Assistant I have had, just behind Eric Posner (7th Circuit Dick Posner's son) who now is a distinguished professor at the University of Chicago Law School.

She also writes well and is highly congenial. I have no reservations in recommending her. If I were a judge, I would hire her as a clerk in a minute.

Yours sincerely,

George L. Priest
Edward J. Phelps Professor of Law and Economics
Yale Law School

George Priest - george.priest@yale.edu - 203-432-1632

Simone Rivera

**Writing Sample**

Introductory Note:

I submitted the following brief as part of my work in Yale Law School's Constitutional Litigation Seminar. I was assigned to the role of Counsel for the Petitioners. The work is entirely my own.

**No. 21-3**

# In the Supreme Court of the United States

ERIC S. SCHMITT, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MISSOURI, ET AL.
*Petitioners*,

v.

REPRODUCTIVE HEALTH SERVICES OF PLANNED PARENTHOOD OF THE ST. LOUIS REGION, ET AL.
*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

**BRIEF FOR THE PETITIONERS**

SIMONE RIVERA
*Counsel of Record*
YALE LAW SCHOOL
CONSTITUTIONAL
LITIGATION SEMINAR

*Counsel for the Petitioners*

## QUESTION PRESENTED

Whether the anti-discrimination provision of Missouri's law, which prohibits medical providers from performing abortions when the provider knows that the sole reason for the abortion is a screening or test that indicates a fetal Down Syndrome diagnosis ("Down Syndrome Provision"), is a valid, reasonable regulation of abortion under *Roe v. Wade* and *Planned Parenthood v. Casey*.

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**

**TABLE OF AUTHORITIES—continued**

**Page(s)**

**TABLE OF AUTHORITIES—continued**

**Page(s)**



**STATUTES, RULES AND REGULATIONS**



**MISCELLANEOUS**

## BRIEF FOR THE PETITIONERS

### OPINIONS BELOW

The district court's opinion denying a preliminary injunction against Missouri's Down Syndrome Provision, Mo. Rev. Stat. § 188.038.2, is reported at 389 F. Supp. 3d 631 (W.D. Mo. Aug. 27, 2019).

The district court's opinion granting a preliminary injunction against Missouri's Down Syndrome Provision, Mo. Rev. Stat. § 188.038.2, and thereby modifying its initial order, is reported at 408 F. Supp. 3d 1049 (W.D. Mo. Sept. 27, 2019).

The Eighth Circuit's opinion affirming the district court's order granting a preliminary injunction is reported at 1 F.4th 552 (8th Cir. 2021).

### JURISDICTION

The judgment of the court of appeals was entered on June 9, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### STATEMENT

This Court never intended for abortion to be used as a tool to eliminate "unfit" children. *See Box v. Planned Parenthood of Indiana & Kentucky, Inc.,* 139 S. Ct. 1780, 1787 (2019).Yet, this is exactly how many have invoked the right to choose today. *Id.* at 1787.

Abortion advocates and eugenicists, alike, have long viewed abortion as a means to rid society of children with undesirable characteristics. Margaret Sanger, Planned Parenthood's founder, even admitted

as much. *See* Margaret Sanger, *Birth Control and Racial Betterment*, BIRTH CONTROL REV., Feb. 1919. She not only confessed to "personally believe[ing] in the sterilization of the feeble-minded, the insane and syphilitic." *Id.* She also directly linked the abortion- and eugenics-movements by claiming that each sought "to assist the race toward the elimination of the unfit." *Id. See also* Margaret Sanger, *Birth Control or Abortion?* BIRTH CONTROL REV., Dec. 1918. (distinguishing abortion from birth control, but embracing eugenics arguments in support of both).

This Court should not allow abortion advocates to manipulate its jurisprudence any longer. It should not let abortion advocates mask their assault on the disabled under the cover of law. Instead, it should defend this vulnerable community and uphold the constitutionality of reasonable restrictions on abortion. The Court began this effort in *Planned Parenthood of Southeastern Pa. v. Casey,* and it has supported this stance ever since. 505 U.S. 833 (1992).

American society is at a turning point. The people's representatives are no longer standing idly by. Across the country, states are marshalling their regulatory might to defend the disabled. Missouri joined this fight when it enacted House Bill 126 ("HB 126") on May 17, 2019, which restricts abortions based solely on race, sex, or Down Syndrome diagnosis. Mo. Rev. Stat. § 188.038.[1] In this regard, the State has sought to protect the youngest members of this

[1] *See* Guttmacher Institute, *Abortion Bans in Cases of Sex or Race Selection or Genetic Anomaly* (last visited Oct. 18, 2021), at https://www.guttmacher.org/state-policy/explore/abortion-bans-cases-sex-or-race-selection-or-genetic-anomaly (listing state regulations that restrict abortions based on genetic anomalies).

community from unjust discrimination. States legislating to this effect should be commended, not challenged.

Abortions motivated solely by a fetal Down Syndrome diagnosis are "a form of bias or disability discrimination." Mo. Rev. Stat. § 188.038. They have the malicious effect of "victimiz[ing] the disabled unborn child at his or her most vulnerable stage." *Id.* For this reason, rather than "send[] a message of dwindling support for their unique challenges, foster[] a false sense that disability is something that could have been avoidable, and…likely increase the stigma associated with disability," Missouri lawmakers chose to take a more noble path. *Id.* at § 188.038.1(6). They chose to protect the disabled community and stand by the civilized notion that ending bias and discrimination against historically marginalized groups is a legitimate purpose of government. *Id.* at § 188.038.1(1)-(2)2).

Reproductive Health Services of Planned Parenthood of the St. Louis Region and its Chief Medical Officer, Dr. Colleen P. McNicholas (together, "RHS"), filed a motion for a preliminary injunction shortly after Governor Parson signed HB126 into law on May 24, 2019. They did so on the grounds that the Down Syndrome Provision would "effectively prohibit RHS from providing pre-viability abortion care in Missouri." *Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Parson*, 1 F.4th 552, 557 (8th Cir. 2021).

The district court cast doubt on this argument. It went so far as to state that the issue of whether the Down Syndrome Provision would "interfere with the abortion rights of real-life women" was "entirely speculative" and unsupported by the evidence.

*Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Parson*, 389 F. Supp. 3d 631, 638 (W.D. Mo. Aug. 27, 2019).

RHS subsequently filed a supplemental declaration. *Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Parson*, 408 F. Supp. 3d 1049, 1052 (W.D. Mo. Sept. 27, 2019). In which, RHS purported to show how the contested Provision would likely cause irreparable harm. Yet, RHS still failed to cite any conclusive facts or empirics that demonstrated how Missouri's law would impact the rights of women in the State. *Id.* Instead, it relied entirely on the views of Dr. McNicholas herself. *Id.*

Notably, Dr. McNicholas never definitively stated that she treated any patients who sought an abortion based solely on a fetal Down Syndrome diagnosis. *Parson*, 1 F. 4th at 564-565. She also never definitively stated that any women in the State would be precluded from obtaining an abortion were the Down Syndrome Provision to go into effect. *Id.* Nevertheless, the district court made the questionable decision to read these assumptions into the doctor's statement. *Parson*, 408 F. Supp. 3d at 1051-53.

The district court committed clear error by taking these interpretive liberties. On appeal, the Eighth Circuit echoed many of the lower court's dubious conclusions. It agreed with the district court that Missouri's law was effectively a ban on pre-viability abortions. *Parson*, 1 F. 4th at 561. It also supported the contention that, absent a preliminary injunction, RHS would be unable to provide pre-viability abortions, both to those seeking one "solely on the basis of a fetal Down Syndrome diagnosis and to the patients for whom the diagnosis is only part of the motivation." *Id.* at 563 (internal quotation marks

omitted). It was on these grounds alone that the appellate court affirmed the lower court's order to grant injunctive relief. *Id.* at 564.

## SUMMARY OF ARGUMENT

The facts underlying the district court's order, and the Eighth Circuit's affirmance thereof, do not support a grant of injunctive relief. The party seeking an injunction has the burden to show that justice requires this extraordinary form of relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F. 2d 109, 114 (8th Cir. 1981) (en banc). RHS failed to show that the balance of equities tips in its favor. Thus, the lower courts erred by enjoining the Down Syndrome Provision.

This Court should reverse the Eighth Circuit's opinion and vacate the injunction. RHS not only failed to show that the Down Syndrome Provision would cause irreparable harm. It also failed to show that it is likely to succeed on the merits.

The Down Syndrome Provision is a lawful regulation on abortion. The *Casey* Court made clear that the government may impose reasonable regulations on a woman's right to choose. *Casey,* 505 U.S. at 873. This Court has yet to rule on the permissibility of anti-discrimination regulations that seek to restrict eugenics abortions. *See Box*, 139 S. Ct. at 1792 (Thomas, J., concurring). It should take the opportunity to do so now. It should reaffirm the long-held proposition that the government may use its voice and its regulatory authority to impose reasonable restrictions on the woman's right to choose. *Gonzalez v. Carhart,* 550 U.S. 125, 128 (2007).

In doing so, it should also recognize that abortion restrictions that seek to prevent discrimination and to protect society's most vulnerable strike at the core of the constitutional balance between the woman's right to choose, on the one hand, and the government's right to regulate, on the other.

Missouri's law is narrowly tailored law to serve the State's compelling interests in preventing disability discrimination. It is immaterial whether this Court subjects the Down Syndrome Provision to *Casey's* undue burden test or finds that strict scrutiny applies. *Casey,* 505 U.S. at 874. The result would be the same. This Court should find that Missouri's anti-discrimination law is a valid regulation on abortion under *Roe v. Wade,* 410 U.S. 113 (1973), and *Casey*.

## ARGUMENT

I. RHS is Not Entitled to Injunctive Relief

A. The Standard of Review

The lower court's decision to grant injunctive relief is reviewable under an abuse of discretion standard. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932-33 (1975); *Brown v. Chote*, 411 U.S. 452, 457 (1973). Factual findings are examined for clear error and legal conclusions are considered *de novo*. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 322 (2015) (citing Fed. Rule Civ. Proc. 52(a)(6)).

B. Preliminary Injunctions are an Extraordinary Remedy

Preliminary injunctions are an extraordinary remedy. *Winter*, 555 U.S. at 24. They are never awarded as of right. *Yakus v. United States*, 321 U.S. 414, 440 (1944).

The party seeking a preliminary injunction must establish that they are entitled to this relief. *Watkins Inc. v. Lewis,* 346 F. 3d 841, 844 (8th Cir. 2003). Courts consider several factors before deciding whether to grant an injunction. The party seeking an injunction must show: "(1) the threat of irreparable harm to the moving party, (2) the balance between this harm and the injury that granting the injunction will inflict on the non-moving party, (3) the probability that the moving party will succeed on the merits, and (4) the public interest." [CITE AND QUOTE *WINTER* HERE, NOT THE EIGHTH CIRCUIT CASE.] *Planned Parenthood of Ark. & E. Okla. v. Jegley,* 864 F. 3d 953, 957 (8th Cir. 2017) (citing *Dataphase,* 640 F. 2d at 114). *See Nken v. Holder,* 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (identifying these four factors as part of the court's "traditional" injunction-analysis).

Where, as here, the "preliminary injunction is sought to enjoin the implementation of a duly enacted state statute," the moving party must "make a more rigorous showing that it is likely to prevail on the merits." *Jegley,* 864 F. 3d at 957-58. This is for the sound reason that "[g]overnmental policies implemented through legislation," are the product of the democratic process at work. *Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Rounds*, 530 F.3d

724, 732 (8th Cir. 2008) (internal quotation marks omitted). *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (quoting *Orrin*) [NOT CLEAR, DID THE COURT QUOTE THE REHNQUIST QUOTE?]; *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 507 (2013) (To hold otherwise [NOT CLEAR (AND DON'T USE A CAPITAL LETTER TO START A PARENTHETICAL UNLESS YOU'RE QUOTING!)] would "flout core principles of federalism.").

### C. RHS Failed to Meet the Requisite Burden for Injunctive Relief

RHS failed to show that it would likely suffer irreparable harm, and the district court failed to make this finding, as well. *See Winter*, 555 U.S. at 22 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (assessing the irreparable harm requirement in the context of a preliminary injunction)).

The district court initially declined RHS's request to enjoin the Down Syndrome Provision precisely because RHS failed to show how this Provision would cause irreparable harm. *Parson*, 389 F. Supp.3d at 638-39 (finding that the Down Syndrome Provision does not interfere with the rights of any "real-life women."). It was only after RHS submitted a supplemental declaration from one of its staff members, Dr. McNicholas, that the court determined that irreparable harm was likely. *Parson,* 408 F. 3d at

1050 (Dr. McNicholas's supplemental declaration is provided in Doc. 60-1). A close analysis of the court's reasoning suggests that this finding was in clear error.

The court justified its decision to grant injunctive relief based on speculation alone. It inferred from Dr. McNicholas's statements that the Provision would cause irreparable harm even though she never made any conclusive statements to this effect. *Id.* at 1050. In making this finding, the court focused on two of Dr. McNicholas' statements, in particular: first, that she treated three patients in Missouri that year who had received a fetal Down Syndrome diagnosis; second, that she provided abortion care to numerous patients who had received a fetal diagnosis. *Id*. The doctor never claimed that she treated patients who sought an abortion based on a fetal diagnosis *of any type*. Nor did she claim that she treated patients who sought an abortion based solely on *a fetal Down Syndrome Diagnosis*. *Parson*, 1 F. 4th at 566-67 (Stras, J., concurring in part) (making this finding). Without such a showing, it is unclear what effect, if any, the Down Syndrome Provision would have on the abortion rights of women in Missouri.

The Down Syndrome Provision restricts patients seeking an abortion based solely on a fetal Down Syndrome diagnosis. Mo. Rev. Stat. § 188.038.2. Because the district court modified its order based entirely on Dr. McNicholas's statements—and because Dr. McNicholas never stated that she treated patients who sought abortion care solely because they received a Down Syndrome diagnosis—her declaration provides insufficient grounds upon which to grant injunctive relief. Yet, the court did so, nonetheless.

The district court was in clear error when it granted RHS's request for injunctive relief. *See Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 (1959) ("The basis of injunctive relief in the federal courts has always been irreparable harm…At least as much is required to justify a trial court in using its discretion under the Federal Rules."). The district court took significant inferential liberties in its review of Dr. McNicholas's statement. In concluding that Missourians would likely suffer irreparably were the Down Syndrome Provision to go into effect, the court relied not on any conclusive facts or empirics, but rather on its own assumptions. "Courts are not supposed to grant injunctions based on guesses." *Parson*, 1 F.4th at 566 (Stras, J., concurring in part). The district court erred gravely in doing so. *See also Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir.1987).

II. Missouri's Down Syndrome Provision is a Valid Regulation on Abortion

Beyond RHS's failure to show that the Down Syndrome Provision will cause irreparable harm, it was also unable to show that it was likely to succeed on the merits. *Munaf v. Geren*, 553 U.S. 674, 690 (2008) (noting this requirement for injunctive relief).

A. It is Permissible to Regulate Abortions Under *Roe v. Wade* and *Planned Parenthood v. Casey*

The *Casey* Court was clear: reasonable restrictions on abortion are permissible. 505 U.S. at 873 ("Not every law which makes a right more difficult

to exercise is, ipso facto, an infringement of that right."). Regulations, unlike bans, do not "prohibit[] women from making the ultimate decision to terminate a pregnancy." *Edwards v. Beck,* 786 F. 3d 1113, 1117 (8th Cir. 2015). They only incidentally affect the right to obtain an abortion. *Gonzales*, 550 U.S. at 157. As such, courts will not invalidate a regulation simply because it makes abortions more difficult or more expensive to procure. *Casey*, 505 U.S. at 874.

The Constitution allows states to regulate abortions when they do so in furtherance of a valid purpose. The *Casey* Court acknowledged this, and, in doing so, never provided an exhaustive list of which regulations are permissible. Of the provisions at issue in that case, none prohibited abortions based solely on the race, sex, or disability of the unborn child. *See Casey,* 505 U.S. at 844. The Court has never ruled on the constitutionality of restrictions on eugenic abortions. *See Box,* 139 S. Ct. at 1792. It should take the opportunity to do so now.

### B. Missouri has a Compelling Interest in Preventing Discrimination

HB 126 is not an outright ban on abortions. It is a valid regulation that seeks to prevent discrimination based on one's disability. In passing this law, Missouri sought to advance numerous interests which this Court has deemed compelling: The State advanced its compelling interest in protecting potential life. *See Casey,* 505 U.S. at 870 ("[T[he State has a legitimate interest in promoting the life or potential life of the unborn."); *Gonzales*, 550 U.S. 124, 157-58 (2007) ("[T]he State may use its regulatory power to bar

certain procedures and substitute others," in order to promote its legitimate interest in maintaining "respect for life, including life of the unborn."). The State also advanced its compelling interest in preserving the integrity of the medical profession by ensuring that physicians can retain their primary role as healers. *Id.* at 157 ("There can be no doubt the government 'has an interest in protecting the integrity and ethics of the medical profession.'") (referencing *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997)). Even further, the State advanced its compelling interest in preventing unjust discrimination. *See Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 868, (2017); *United States v. Virginia*, 518 U. S. 515, 532 (1996); *Tennessee v. Lane*, 541 U. S. 509, 510-12 (2004)).

It is essential for the State to be able to "vindicate[e] the rights of people…potentially subjected to race, sex, and disability discrimination." *Box,* 139 S. Ct. at 1792-93. *See id.* at 1783 (The State has a "compelling interest in preventing abortion from becoming a tool of modern-day eugenics."). There is a long line of cases in which this Court has recognized that the government's interest in preventing discrimination is compelling. *See Bd. of Dirs. Of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (finding a compelling interest in eliminating discrimination against women). *See also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 257 (1964); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (recognizing a moral and social wrong in discrimination by private parties). *See further Sch. Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 284 (1987) (upholding a prohibition on discrimination against the disabled); *N.Y. State Club Ass'n v. City of New York*,

487 U.S. 1, 14 n.5 (1988) (finding that prohibitions on the private discrimination against the disabled furthered "compelling" interests).

This Court directly addressed the importance of preventing disability discrimination in *Tennessee v. Lane,* 541 U. S. at 511. When it upheld Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the *Tennessee* Court reasoned that Congress was justified in seeking to remedy "the difficult and intractable problem of disability discrimination." *Id.* at 511. *See also Cleburne v. Cleburne Living Center, Inc.,* 473 U.S. 432, 443 (1985) *id.* at 438 (Stevens, J., concurring) (noting the history of unfair and "grotesque mistreatment" of the disabled) (internal quotations omitted).

Missouri lawmakers passed the Down Syndrome Provision to protect the disabled from discrimination. Mo. Rev. Stat. § 188.038.2. *See id.* at § 188.038.1(2); *id.* at § 188.038.1(6) ("[The] Government has a legitimate interest in preventing the abortion of unborn children with Down Syndrome because it is a form of bias or disability discrimination and victimizes the disabled unborn child at his or her most vulnerable stage.").

This Court has repeatedly recognized that regulations on abortion are lawful, and that the State has a compelling interest in protecting both the lives of unborn children and in preventing disability discrimination. Thus, it cannot be doubted that Missouri's General Assembly sought to advance numerous compelling interests when it enacted the Down Syndrome Provision.

C. The Down Syndrome Provision is Narrowly Tailored to Achieve the State's Compelling Interests

Missouri was careful to balance its legitimate objectives with the rights of women in the State. The law provides that "[n]o person shall perform or induce an abortion on a woman if the person knows that the woman is seeking the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or the potential of Down Syndrome in an unborn child." *Id.* at § 188.038.2. Two elements must be met for the law to apply: (1) the patient must be seeking an abortion *solely because* she received a fetal Down Syndrome diagnosis, and (2) the person administering the abortion *must know* that the patient is seeking the abortion solely for this reason. *Id.* Any "ordinary person" would interpret this Provision as being limited in scope. *See Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) ("Our job is to interpret the [statute] consistent with [its] ordinary meaning") (citing *Perrin v. United States,* 444 U.S. 37, 42 (1979)). The law is therefore sufficiently tailored.

There are numerous ways for a woman to obtain an abortion under Mo. Rev. Stat. § 188.038.2. She could explain that her decision to abort the child is not motivated exclusively by a prenatal Down Syndrome diagnosis, or she could deny that this diagnosis factored into her decision at all. She could also just stay silent on the matter. Nothing in Missouri's law requires pregnant women to state their reasons for seeking an abortion. Thus, pregnant women—including those with a fetal Down Syndrome

diagnosis—can still obtain an abortion regardless of whether the Down Syndrome Provision is in effect. *Id.*

### D. Abortion Regulations are Reviewable Under *Casey's* Undue Burden Test

Abortion restrictions, such as Mo. Rev. Stat. § 188.038.2 are subject to *Casey's* undue burden test. 505 U.S. at 872. The Court developed this test in a deliberate attempt to broaden the extent to which states could regulate abortions. *Id.* at 872 ("A framework of [*Roe's*] rigidity was unnecessary and…sometimes contradicted the State's permissible exercise of its powers.") (referencing *Roe*, 410 U.S. at 163-66). In *Casey*, the Court determined that "[o]nly where state regulation imposes an undue burden on a woman's ability to [choose] does the power of the State reach into the heart of the liberty protected by the Due Process Clause." *Id.* at 874.

The undue burden test requires courts "to consider the burdens a law imposes on abortion access together with the benefits those laws confer." *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2298 (2016). Whether a law imposes an "undue burden" is a "right-specific" analysis that falls "on the spectrum between rational-basis and strict-scrutiny." *Id.* at 2327 (2016) (Thomas, J., dissenting). The burden the Down Syndrome Provision imposes on women in Missouri is slight. Yet, the benefits it confers to the State's disabled community—the protection and support it offers to those with Down Syndrome—are significant. In accordance with *Casey* and its progeny, Missouri's law is surely permissible.

E. Missouri's Law Would Pass Any Level of Scrutiny

The Down Syndrome Provision is narrowly tailored to advance the State's compelling interests. Since the law would survive strict scrutiny, in this respect, it would necessarily survive *Casey's* less-stringent undue burden test, as well. Missouri has a compelling interest in preventing discrimination against the disabled. The Down Syndrome Provision restricts abortions only to those seeking to eliminate their unborn children based solely on that child's disability. Missouri's law is entirely unlike other laws which this Court has invalidated under *Casey's* undue burden analysis. *Compare* V.T.C.A., Health & Safety Code §§ 171.0031(a), 245.010(a) *with* Mo. Rev. Stat. § 188.038.2.

Take the Texas regulation at issue in *Whole Woman's Health* for example. 136 S. Ct. at 2317-19. Unlike that law, Mo. Rev. Stat. § 188.038 does not require women seeking an abortion to travel long distances to "crammed-to-capacity superfacilities;" it does not force existing abortion clinics to serve "five times their usual number of patients;" it does not impose additional operational costs on abortion clinics; nor does it impose any other requirements that would force these clinics to close. *Whole Woman's Health*, 136 S. Ct. at 2317-19. The Down Syndrome Provisions restricts women from obtaining abortions based solely on a fetal Down Syndrome diagnosis. Mo. Rev. Stat. § 188.038.2. The State declined to impose stringent regulations on the abortion facilities, or to make the procedure more difficult to procure. It simply sought to provide more protection to the

disabled community in recognition of the hardships and animus they too often face.

The Down Syndrome Provision neither poses an undue burden nor does it fail strict scrutiny. It is a valid anti-discrimination regulation on abortion. In accordance with this Court's holding in *Casey* and its progeny, this Provision meets constitutional muster.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and the injunction should be vacated.

Respectfully submitted.

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NOVEMBER 2021

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April 27, 2022

The Honorable Lewis J. Liman
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St
New York, NY 10007

Dear Judge Liman:

I am a third-year student at the Georgetown University Law Center and an editor on *The Georgetown Law Journal*. I am writing to apply for a clerkship in your chambers for the 2024-2025 term, at which time I will have worked for nearly two years as a litigator at Katten Muchin Rosenman. I am planning on relocating to New York with my partner, who is moving there following her judicial clerkship.

During the fall semester of my 3L year, I developed a passion for legal writing from my Writing for Law Practice class, in which I learned to research and write efficiently, and adapt my writing style to different legal writing tasks, including briefs, motions, client letters, and internal memoranda. The most rewarding experience in that class for me was drafting summaries of a particular area of law in a non-adversarial setting because I particularly enjoyed stating the law accurately yet objectively. Further, my time as an editor on *The Georgetown Law Journal* has sharpened my attention to detail and honed my ability to write and organize for clarity.

Before starting law school, I worked for four years in a fast-paced environment at a software company, where I balanced competing priorities while solving novel and complex problems for clients. During my 1L summer internship at the Securities and Exchange Commission, I drafted questions ahead of whistleblower interviews, created factual chronologies from information gleaned from discovery, and wrote internal memoranda applying my legal research to the facts of the investigation. Last summer, as a summer associate at Katten, I performed extensive legal research in the areas of contract, tort, and securities law, and I wrote internal memoranda and client letters based on my findings.

My resume, transcripts, and writing sample are enclosed for review. Letters of recommendation from Professors Lisa Heinzerling, Jeffrey Lopez, and Jonah Perlin will arrive under separate cover. Should you require additional information, please do not hesitate to let me know.

Sincerely,

Dillon Rodriguez

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**UNIVERSITY OF MICHIGAN**, Ann Arbor, MI
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## PROFESSIONAL EXPERIENCE

**KATTEN MUCHIN ROSENMAN LLP**, Chicago, IL May 2021–July 2021
*Summer Associate (return offer extended in the Financial Markets Litigation and Enforcement group)*

- Wrote internal memorandum summarizing United States courts of appeals' current interpretations of certain statutory provisions.
- Researched the applicability of novel claims to shareholder derivative suits.
- Performed multi-jurisdictional case law research in preparation for arbitration panels for client and sent findings in letter to client.
- Wrote memorandum comparing tests for certain tort and contract law concepts among three state jurisdictions.
- Researched case law on courts' interpretations of certain contractual provisions and wrote memorandum for supervising partner.
- Partnered with Legal Aid Chicago to assist low-income individuals with probate matter.

**U.S. SECURITIES AND EXCHANGE COMMISSION**, Washington, DC May 2020–July 2020
*Honors Legal Intern, Division of Enforcement—Foreign Corrupt Practices Act Unit*

- Investigated two U.S. issuers for violations of the Anti-Bribery provision of the FCPA.
- Reviewed and analyzed legal documents including emails, contracts, spreadsheets, phone records, and other financial documents; organized documents by content and relevance; synthesized factual information into chronologies.
- Performed legal research on theories of agency as they relate to the FCPA; conducted open-source research on individuals of interest in investigations; wrote internal memoranda detailing findings.
- Attended and took notes during interviews of fact witnesses; participated in joint-investigation meetings with attorneys from Department of Justice, Homeland Security Investigations, and Federal Bureau of Investigation.

**SS&C EZE**, Chicago, IL July 2015–Aug. 2019
*Product Solutions Engineer*

- Analyzed adverse impacts of software enhancements on clients' workflows; presented findings in written memoranda addressed to clients' senior executive management.
- Led a team of five Client Solutions Analysts; oversaw team members' work products, evaluated performance for semi-annual reviews, onboarded new hires, composed training materials, and led daily reporting meetings.
- Co-managed a compliance project analyzing evolving regulations; gathered requirements, oversaw internal testing, and gave status report presentations to management.
- Served as the subject matter expert on electronic trading for hedge fund and corporate clients.
- Researched SEC and FINRA regulatory requirements pertaining to trading and capital markets.

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|---|---|---|---|---|---|---|---|
| **Fall 2019** | | | | | | | |
| LAWJ | 001 | 94 | Civil Procedure<br>Kevin Arlyck | 4.00 | A- | 14.68 | |
| LAWJ | 002 | 42 | Contracts<br>Anupam Chander | 4.00 | B | 12.00 | |
| LAWJ | 004 | 94 | Constitutional Law I: The Federal System<br>Laura Donohue | 3.00 | B | 9.00 | |
| LAWJ | 005 | 41 | Legal Practice: Writing and Analysis<br>Jonah Perlin | 2.00 | IP | 0.00 | |

| | EHrs | QHrs | QPts | GPA |
|---|---|---|---|---|
| Current | 11.00 | 11.00 | 35.68 | 3.24 |
| Cumulative | 11.00 | 11.00 | 35.68 | 3.24 |

| Subj | Crs | Sec | Title | Crd | Grd | Pts | R |
|---|---|---|---|---|---|---|---|
| **Spring 2020** | | | | | | | |
| LAWJ | 003 | 42 | Criminal Justice<br>Rosa Brooks | 4.00 | P | 0.00 | |
| LAWJ | 005 | 41 | Legal Practice: Writing and Analysis<br>Jonah Perlin | 4.00 | P | 0.00 | |
| LAWJ | 007 | 94 | Property<br>Sheila Foster | 4.00 | P | 0.00 | |
| LAWJ | 008 | 94 | Torts<br>Gary Peller | 4.00 | P | 0.00 | |
| LAWJ | 1323 | 50 | International Law, National Security, and Human Rights<br>Milton Regan | 3.00 | P | 0.00 | |

Mandatory P/F for Spring 2020 due to COVID19

| | EHrs | QHrs | QPts | GPA |
|---|---|---|---|---|
| Current | 19.00 | 0.00 | 0.00 | 0.00 |
| Annual | 30.00 | 11.00 | 35.68 | 3.24 |
| Cumulative | 30.00 | 11.00 | 35.68 | 3.24 |

| Subj | Crs | Sec | Title | Crd | Grd | Pts | R |
|---|---|---|---|---|---|---|---|
| **Fall 2020** | | | | | | | |
| LAWJ | 121 | 09 | Corporations<br>Donald Langevoort | 4.00 | A- | 14.68 | |
| LAWJ | 165 | 05 | Evidence<br>Michael Gottesman | 4.00 | A- | 14.68 | |
| LAWJ | 1663 | 05 | The Federal Courts and the World Seminar: History, Developments, and Problems<br>Kevin Arlyck | 2.00 | A- | 7.34 | |
| LAWJ | 396 | 10 | Securities Regulation<br>Barry Summer | 2.00 | A | 8.00 | |
| LAWJ | 950 | 08 | Complex Securities Investigations<br>Kevin Muhlendorf | 2.00 | A- | 7.34 | |

| | EHrs | QHrs | QPts | GPA |
|---|---|---|---|---|
| Current | 14.00 | 14.00 | 52.04 | 3.72 |
| Cumulative | 44.00 | 25.00 | 87.72 | 3.51 |

----------Continued on Next Column----------

| Subj | Crs | Sec | Title | Crd | Grd | Pts | R |
|---|---|---|---|---|---|---|---|
| **Spring 2021** | | | | | | | |
| LAWJ | 1298 | 08 | Global Anti-Corruption Seminar<br>Robert Luskin | 2.00 | A+ | 8.66 | |
| LAWJ | 1349 | 08 | Administrative Law<br>Lisa Heinzerling | 3.00 | A | 12.00 | |
| LAWJ | 1652 | 05 | Criminal Justice II: Criminal Trials<br>Michael Gottesman | 3.00 | A- | 11.01 | |
| LAWJ | 178 | 05 | Federal Courts and the Federal System<br>David Vladeck | 3.00 | P | 0.00 | |
| LAWJ | 317 | 07 | Negotiations Seminar<br>Stephen Altman | 3.00 | A- | 11.01 | |

Dean's List Spring 2021

| | EHrs | QHrs | QPts | GPA |
|---|---|---|---|---|
| Current | 14.00 | 11.00 | 42.68 | 3.88 |
| Annual | 28.00 | 25.00 | 94.72 | 3.79 |
| Cumulative | 58.00 | 36.00 | 130.40 | 3.62 |

| Subj | Crs | Sec | Title | Crd | Grd | Pts | R |
|---|---|---|---|---|---|---|---|
| **Fall 2021** | | | | | | | |
| LAWJ | 1104 | 08 | Writing for Law Practice<br>Jeffrey Lopez | 2.00 | A | 8.00 | |
| LAWJ | 1352 | 05 | Pursuing Fraud Against the Government: A Model of Complex Civil Litigation<br>Stuart Rennert | 3.00 | A | 12.00 | |
| LAWJ | 146 | 08 | Environmental Law<br>Lisa Heinzerling | 3.00 | A | 12.00 | |
| LAWJ | 215 | 08 | Constitutional Law II: Individual Rights and Liberties<br>Louis Seidman | 4.00 | P | 0.00 | |
| LAWJ | 361 | 03 | Professional Responsibility<br>Stuart Teicher | 2.00 | A | 8.00 | |

| | EHrs | QHrs | QPts | GPA |
|---|---|---|---|---|
| Current | 14.00 | 10.00 | 40.00 | 4.00 |
| Cumulative | 72.00 | 46.00 | 170.40 | 3.70 |

| Subj | Crs | Sec | Title | Crd | Grd | Pts | R |
|---|---|---|---|---|---|---|---|
| **Spring 2022** | | | | | | | |
| In Progress: | | | | | | | |
| LAWJ | 037 | 08 | Immigration Law and Policy | 3.00 | In Progress | | |
| LAWJ | 090 | 05 | Capital Punishment Seminar | 3.00 | In Progress | | |
| LAWJ | 1245 | 09 | Trial Practice and Applied Evidence | 3.00 | In Progress | | |
| LAWJ | 134 | 05 | Decedents' Estates | 4.00 | In Progress | | |

**Transcript Totals**

| | EHrs | QHrs | QPts | GPA |
|---|---|---|---|---|
| Current | | | | |
| Annual | 14.00 | 10.00 | 40.00 | 4.00 |
| Cumulative | 72.00 | 46.00 | 170.40 | 3.70 |

**End of Juris Doctor Record**

**THE UNIVERSITY OF MICHIGAN - ANN ARBOR**
**Unofficial Transcript - Not an Official Transcript**

Rodriguez,Dillon Lee
UM ID: 69642323 UIC: 0995782265
Uniqname: DRODDDDD


Date: Feb 23, 2022

Citizen: U.S. Citizen

Rodriguez,Dillon Lee (313) 920-4135
8450 Valley Vw
South Lyon, MI 48178
United States

**Previous Names:**
Rodriguez,Dillon L

**University of Michigan Degrees Awarded**

School/College: Literature, Sci, and the Arts and Natural Resources & Environment*
Major: Environment
Minor: Applied Statistics
Degree: Bachelor of Science
Awarded: 21-Aug-2015

| Fall 2011 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| **Transfer Test Credit** | | | | | | | |
| Advanced Placement | | | | | | | |
| MATH | 120 | AP Calculus Credit I | T | 0.00 | 0.00 | 2.00 | 0.00 |
| **Undergraduate L S & A** | | | | | | | |
| **Transfer Credit Accepted:** | | | | | **0.00** | **2.00** | **0.00** |
| **Fall 2011** | | **Undergraduate L S & A** | **Grade** | **Hours** | **MSH** | **CTP** | **MHP** |
| ANTHRCUL | 101 | Intro Anthro | A- | 4.00 | 4.00 | 4.00 | 14.80 |
| PHYSICS | 112 | Cosmology | A | 3.00 | 3.00 | 3.00 | 12.00 |
| RCCORE | 100 | First Year Sem | A | 4.00 | 4.00 | 4.00 | 16.00 |
| | | The Trials and Tribulations of Harry Potter | | | | | |
| WRITING | 100 | Transit Coll Writing | CR | 3.00 | 0.00 | 3.00 | 0.00 |
| **Term Total** | | **GPA: 3.890** | | **14.00** | **11.00** | **14.00** | **42.80** |
| **Cumulative Total** | | **GPA: 3.890** | | | **11.00** | **16.00** | **42.80** |
| **Winter 2012** | | **Undergraduate L S & A** | **Grade** | **Hours** | **MSH** | **CTP** | **MHP** |
| ANTHRBIO | 366 | Human Evol Anatomy | B- | 4.00 | 4.00 | 4.00 | 10.80 |
| ANTHRCUL | 370 | Lang&Discrim | C+ | 3.00 | 3.00 | 3.00 | 6.90 |
| CHEM | 125 | Gen Chem Lab I | B- | 1.00 | 1.00 | 1.00 | 2.70 |
| CHEM | 126 | Gen Chem Lab II | B- | 1.00 | 1.00 | 1.00 | 2.70 |
| CHEM | 130 | G Chem&R Princ | B- | 3.00 | 3.00 | 3.00 | 8.10 |
| SOC | 100 | Intro to Sociology | C+ | 4.00 | 4.00 | 4.00 | 9.20 |
| **Term Total** | | **GPA: 2.525** | | **16.00** | **16.00** | **16.00** | **40.40** |
| **Cumulative Total** | | **GPA: 3.081** | | | **27.00** | **32.00** | **83.20** |
| **Spring 2012** | | **Undergraduate L S & A** | **Grade** | **Hours** | **MSH** | **CTP** | **MHP** |
| PSYCH | 111 | Intro Psych | B | 4.00 | 4.00 | 4.00 | 12.00 |
| RELIGION | 280 | Jesus&Gospel | B+ | 3.00 | 3.00 | 3.00 | 9.90 |
| **Term Total** | | **GPA: 3.128** | | **7.00** | **7.00** | **7.00** | **21.90** |
| **Cumulative Total** | | **GPA: 3.091** | | | **34.00** | **39.00** | **105.10** |
| **Fall 2012** | | **Undergraduate L S & A** | **Grade** | **Hours** | **MSH** | **CTP** | **MHP** |
| ASTRO | 115 | Intro Astrobiology | B+ | 3.00 | 3.00 | 3.00 | 9.90 |
| COMM | 102 | Process & Effects | C+ | 4.00 | 4.00 | 4.00 | 9.20 |
| ENVIRON | 201 | Ecological Issues | B | 4.00 | 4.00 | 4.00 | 12.00 |
| POLISH | 215 | Poland Today | A- | 3.00 | 3.00 | 3.00 | 11.10 |
| **Term Total** | | **GPA: 3.014** | | **14.00** | **14.00** | **14.00** | **42.20** |
| **Cumulative Total** | | **GPA: 3.068** | | | **48.00** | **53.00** | **147.30** |
| **Winter 2013** | | **Undergraduate L S & A** | **Grade** | **Hours** | **MSH** | **CTP** | **MHP** |
| BIOLOGY | 171 | Intro Biology: EEB | C | 4.00 | 4.00 | 4.00 | 8.00 |
| ECON | 101 | Principle Econ I | C | 4.00 | 4.00 | 4.00 | 8.00 |
| EECS | 182 | Bldg Apps for Inf Env | C- | 4.00 | 4.00 | 4.00 | 6.80 |
| **Term Total** | | **GPA: 1.900** | | **12.00** | **12.00** | **12.00** | **22.80** |
| **Cumulative Total** | | **GPA: 2.835** | | | **60.00** | **65.00** | **170.10** |
| **Spring 2013** | | **Undergraduate L S & A** | **Grade** | **Hours** | **MSH** | **CTP** | **MHP** |
| ECON | 102 | Principle Econ II | W | 3.00 | 0.00 | 0.00 | 0.00 |
| POLSCI | 300 | Contemp Issues | B | 4.00 | 4.00 | 4.00 | 12.00 |
| | | U.S. Politics and the "Millennial" Generation | | | | | |
| **Term Total** | | **GPA: 3.000** | | **7.00** | **4.00** | **4.00** | **12.00** |
| **Cumulative Total** | | **GPA: 2.845** | | | **64.00** | **69.00** | **182.10** |

**THE UNIVERSITY OF MICHIGAN - ANN ARBOR**
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Rodriguez,Dillon Lee
UM ID: 69642323 UIC: 0995782265
Uniqname: DRODDDDD



| Fall 2013 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| EARTH | 118 | Intr Geol Lab | B | 1.00 | 1.00 | 1.00 | 3.00 |
| EARTH | 119 | Intro Geology | A- | 4.00 | 4.00 | 4.00 | 14.80 |
| ENVIRON | 412 | Environ in Pub Pol | B+ | 3.00 | 3.00 | 3.00 | 9.90 |
| | | Upper Level Writing Requirement Satisfied | | | | | |
| STATS | 250 | Intr Stat&Data Anlys | B+ | 4.00 | 4.00 | 4.00 | 13.20 |
| **Term Total** | | **GPA: 3.408** | | **12.00** | **12.00** | **12.00** | **40.90** |
| **Cumulative Total** | | **GPA: 2.934** | | | **76.00** | **81.00** | **223.00** |

| Winter 2014 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| ENVIRON | 207 | Sust & Society | B+ | 3.00 | 3.00 | 3.00 | 9.90 |
| ENVIRON | 310 | Env Chem&Dis | B- | 3.00 | 3.00 | 3.00 | 8.10 |
| ENVIRON | 397 | Internship Prep | B- | 1.00 | 1.00 | 1.00 | 2.70 |
| HISTORY | 244 | Arab-Israeli Conflic | A- | 4.00 | 4.00 | 4.00 | 14.80 |
| STATS | 401 | Appl Stat Meth II | B | 4.00 | 4.00 | 4.00 | 12.00 |
| **Term Total** | | **GPA: 3.166** | | **15.00** | **15.00** | **15.00** | **47.50** |
| **Cumulative Total** | | **GPA: 2.972** | | | **91.00** | **96.00** | **270.50** |

| Spring 2014 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| ITALIAN | 315 | Cinema&Society | B | 3.00 | 3.00 | 3.00 | 9.00 |
| **Term Total** | | **GPA: 3.000** | | **3.00** | **3.00** | **3.00** | **9.00** |
| **Cumulative Total** | | **GPA: 2.973** | | | **94.00** | **99.00** | **279.50** |

| Summer 2014 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| EARTH | 344 | Sust Fossil Energy | A- | 3.00 | 3.00 | 3.00 | 11.10 |
| **Term Total** | | **GPA: 3.700** | | **3.00** | **3.00** | **3.00** | **11.10** |
| **Cumulative Total** | | **GPA: 2.995** | | | **97.00** | **102.00** | **290.60** |

| Fall 2014 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| ARCH | 423 | Int U P&Env | B+ | 3.00 | 3.00 | 3.00 | 9.90 |
| ENVIRON | 380 | Min Res, Econ&Envir | B+ | 4.00 | 4.00 | 4.00 | 13.20 |
| | | Upper Level Writing Requirement Satisfied | | | | | |
| SPANISH | 232 | Second Year Span | B | 4.00 | 4.00 | 4.00 | 12.00 |
| STATS | 408 | Stat Prin Prob Solv | A | 4.00 | 4.00 | 4.00 | 16.00 |
| **Term Total** | | **GPA: 3.406** | | **15.00** | **15.00** | **15.00** | **51.10** |
| **Cumulative Total** | | **GPA: 3.050** | | | **112.00** | **117.00** | **341.70** |

| Winter 2015 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| ENVIRON | 361 | Psy Env Stewardship | B+ | 3.00 | 3.00 | 3.00 | 9.90 |
| STATS | 449 | Topics in Biostat | B- | 3.00 | 3.00 | 3.00 | 8.10 |
| STATS | 480 | Survey Sampling | B- | 4.00 | 4.00 | 4.00 | 10.80 |
| **Term Total** | | **GPA: 2.880** | | **10.00** | **10.00** | **10.00** | **28.80** |
| **Cumulative Total** | | **GPA: 3.036** | | | **122.00** | **127.00** | **370.50** |

| Spring 2015 | | Undergraduate L S & A | Grade | Hours | MSH | CTP | MHP |
|---|---|---|---|---|---|---|---|
| EEB | 381 | General Ecology | B | 5.00 | 5.00 | 5.00 | 15.00 |
| **Term Total** | | **GPA: 3.000** | | **5.00** | **5.00** | **5.00** | **15.00** |
| **Cumulative Total** | | **GPA: 3.035** | | | **127.00** | **132.00** | **385.50** |

| Academic Statistics for Undergraduate L S & A | | MSH | CTP | MHP |
|---|---|---|---|---|
| **Total to Date** | **GPA: 3.035** | **127.00** | **132.00** | **385.50** |

**THE UNIVERSITY OF MICHIGAN - ANN ARBOR**
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Rodriguez,Dillon Lee
UM ID: 69642323 UIC: 0995782265
Uniqname: DRODDDDD



**Program Action History: Lit, Sci, and the Arts UG Deg**

09/09/2015 Completion of Program
Environment BS
09/09/2015 Completion of Program
Minor -Applied Statistics BS
12/01/2014 Plan Change
Environment BS
12/01/2014 Plan Change
Minor -Applied Statistics BS
12/01/2014 Plan Change
Environment BS
12/01/2014 Plan Change
Minor -Applied Statistics BS
12/01/2014 Plan Change
Residential College
11/25/2014 Plan Change
Anthropology BS
11/25/2014 Plan Change
Environment BS
11/25/2014 Plan Change
Minor -Applied Statistics BS
11/25/2014 Plan Change
Residential College
02/20/2014 Plan Change
Anthropology BS
02/20/2014 Plan Change
Environment BS
02/20/2014 Plan Change
Minor -Applied Statistics BS
02/20/2014 Plan Change
Residential College
12/18/2013 Plan Change
Anthropology BS
12/18/2013 Plan Change
Minor -Applied Statistics BS
12/18/2013 Plan Change
Residential College
01/11/2012 Plan Change
Anthropology BS
01/11/2012 Plan Change
Residential College
07/07/2011 Plan Change
LSA Undeclared
07/07/2011 Plan Change
Residential College
03/02/2011 Matriculation
Residential College

**Remarks**

*Degrees with a specialization in The Environment are jointly conferred by the School of Natural Resources and the Environment and the College of Literature, Science, and the Arts.

**Academic Previous Experience**

| | |
|---|---|
| Crestwood High School | MI, United States |
| High School Diploma | 06/04/2011 |

**Fall 2011 RCCORE 100 First Year Sem**
Hernandez,Lolita

The first year seminar class, The Trials and Tribulations of Harry Potter, explored the heroic struggles of Harry Potter and others to secure peace and harmony for the world of wizards and muggles alike. Through a study of the series students considered the possibility of heroic moral conviction as a magical solution to the overwhelming issues that follow the global community from the twentieth century, when Potter first saw print, to the twenty-first century. Readings consisted of essays from The Ultimate Harry Potter and Philosophy, as well as essays by Jorge Luis Borges, in addition to the Harry Potter books. The writing consisted of one 4-page panel presentation and three 2-page critiques of panel presentations. The final paper was 8-10 pages and explored some aspect of themes that emerge from the Harry Potter series. All work on papers included revising drafts as necessary. In addition, students were expected to share work in class, as well as participate in creative, in-class writing exercises. Grades were based on completion of all papers and revisions, class attendance, and class participation.

Dillon Rodriguez completed all assignments in a timely manner, including revisions as needed. His panel paper, "The Development and Dynamic of Harry Potter," examines the theme of coming of age so prevalent in the series and so relevant to the original Harry Potter fans, as they came of age with the main characters of the series. Dillon's final paper, "Harry Potter in Many Cultural Perspectives," reviews primarily the evangelical Christian opposition to the books, concluding that Harry Potter will live on, no matter who opposes the series because, "You can't run out of magic." Otherwise, Dillon's three panel critiques reflect attentiveness to the panel presentations and engagement with the issues. He contributed regularly to class discussions and writing exercises.

**End of Unofficial Transcript**

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

April 27, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write this letter in support of Dillon Rodriguez's application for a clerkship in your chambers. As a former law clerk myself to two federal judges, I know that if given the opportunity, Dillon would make a very strong law clerk and a valuable addition to your staff.

I know Dillon well from his time as my Legal Practice student at Georgetown Law. Legal Practice is a year-long 1L course focused on legal research and writing as well as oral argument, supervisory presentations, and other professional skills. Dillon was impressive from the first day. He was consistently prepared for class and participated regularly in a way that always helped move class discussion forward. When meeting with Dillon individually, he was always prepared and asked thoughtful questions. What impressed me most about Dillon, though, was his drive and desire to learn from each assignment and to use each assignment as an opportunity to become a stronger legal writer. As a result, although he did well in the fall semester of my course, I am confident he would have done even better in the spring had the COVID-19 pandemic not prevented us from awarding final grades beyond pass-fail.

I also want to highlight Dillon's dedication to the craft of legal research and writing that is so important to the success of a judicial law clerk. This is demonstrated not only by his work in my course but also by his decision to take additional legal writing courses during his time at Georgetown beyond what is required including "Writing for Law Practice" (in which he earned an A), "Trial Practice and Applied Evidence," as well as a number of writing-intensive seminars in which he has received uniformly strong grades. This dedication to the craft of legal research and writing is unique even at a large law school like Georgetown. In light of these experiences, I am very confident that Dillon will prove to be a successful and practice-ready law clerk that you will come to trust both for his writing abilities and his judgment.

Another word about Dillon's academic performance. As a Georgetown Law alumnus and now professor, I've seen many Georgetown transcripts. That said, I haven't seen one quite like Dillon's. His trajectory from his first semester to his last semester is absolutely exceptional. For many law students the first semester is about getting their footing and figuring out how to succeed in a new academic environment. That said, to see such a marked transformation in GPA during the second and third year is rare and is a real testament to the law student Dillon has become and the lawyer he will ultimately be. More than that, the fact that he was so successful in his 2L and 3L coursework while also serving as an editor on the school's flagship journal for which students receive no additional credits or compensation is downright extraordinary.

All of that said, Dillon is much more than his GPA or performance in a particular class. He is thoughtful and liked by his professors and classmates alike. He is engaging to talk to and has a great sense of self. He is seeking to clerk for all of the right reasons and has expressed to me his sincere enthusiasm and desire to work for and learn from a judge before pursuing a career dedicated to litigation and financial regulation. Dillon knows that clerking is a once-in-a-lifetime opportunity and the best first step for his career. If given the opportunity I am confident that he will give it his absolute all. He has used his three years at Georgetown to find himself and find his professional niche—and at each stage has focused on gaining as much as he possibly can from the experience. As a result, I am sure that as a law clerk he'll be a team player, proactive, and a hard worker.

More of all, Dillon is an absolute joy to be around. Given the size and nature of Chambers, I know how important it is to have clerks who "fit" and recognize that they are part of a team (and at times, a family). I am 100% confident that Dillon can do that with ease on any team that he is asked to work with. I am more than happy to discuss his candidacy further with you by phone or by e-mail. I can be reached at 703.801.4685 or at jep82@georgetown.edu.

Respectfully,

Jonah E. Perlin
Associate Professor of Law, Legal Practice
Georgetown University Law Center

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

April 27, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write to enthusiastically support Dillon Rodriguez's application to serve as your law clerk. Dillon was the top student in my Writing for Law Practice class at Georgetown during the Fall 2021 term and I have stayed in contact with him during the Spring semester, suggesting that he use his talents to pursue a judicial clerkship to start his legal career.

Writing for Law Practice prepares upper division law students for practical writing in a law firm or judicial setting by allowing them to work on a single simulated case throughout the semester. Students are required to write five substantive legal documents: an internal case assessment memorandum; a client letter; a legal research memoranda; a collaborative mediation statement; and a lengthy substantive brief, in Dillon's case, an opposition to a motion for preliminary injunction. In addition, students represented their clients at a virtual mediation.

Dillon combines an analytical and detailed approach to legal writing with a humble, yet inquisitive personality that was always seeking to improve his craft. His work throughout the course was consistently excellent, setting an example for his peers and engaging me to explore techniques to sharpen his already high-level writing. Dillon researched complex legal matters and effectively communicated his analysis and application of case law to our fact pattern. His writing is direct and succinct, skillfully applies precedent and, where appropriate, distinguishes authority. He also demonstrated a talent for adapting his writing to a particular purpose and audience, informing or persuading depending on the task.

As part of the course, I had several individual meetings with Dillon to discuss his writing and professional goals. I always enjoy my conversations with Dillon; he is thoughtful, friendly and has a maturity and depth to him that is uncommon even among the talented law students at Georgetown. Despite his keen intellect, he is understated, rather than boastful or overconfident. His presentation at the mediation, which involved responding to probing legal and factual questions, as well as practical inquiries regarding the costs and benefits of settling the case, was cogent, detailed, and professional.

Writing for Law Practice provides me the opportunity to work closely with my students. Over the nine years I have taught the class, Dillon ranks among the very top students I have instructed. He is methodical, takes great pride in his work and works well with others. I would gladly have him on any litigation or deal team.
Dillon is well prepared to be an excellent law clerk. He will provide chambers with legal insight, oral and written talent, and attention to detail. I offer Dillon my strongest recommendation and look forward to his long and successful legal career.

Best regards,

Jeffrey J. Lopez
Adjunct Professor
Georgetown University Law Center

Jeffrey Lopez - jeffrey.lopez@georgetown.edu - 202-957-6621

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

April 27, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing to recommend Dillon Rodriguez for a judicial clerkship with you.

Dillon is a third-year law student at Georgetown. I have come to know him because he was a student in my Administrative Law class last spring and in my Environmental Law class last fall. My Administrative Law class is so large (it always has more than 100 students) that I have, with some sheepishness, taken to assessing students based on midterm quizzes and a final exam which consist entirely of true-false and multiple-choice questions. Dillon received an A in the course and an almost perfect score on the final exam, demonstrating an admirable command of the subject matter. In Environmental Law, in which I give a traditional essay-style exam, Dillon again earned an A. Dillon's written exam was, as these things go, beautiful – smart, knowledgeable, sure-footed, and crystal-clear. I especially appreciated how he, virtually alone among the 50-plus students in the class, caught and analyzed a strange (but intended) quirk in one of the fact patterns. His exam showed a nimble turn of mind paired with a lawyer's attention to detail.

A glance at Dillon's resume reveals that Dillon's academic performance has been just as impressive in his other courses at Georgetown. He has a very fine overall grade point average of 3.7 and, just as notably and despite a rigorous course load, all of the letter grades he has received since first year have been of the "A" variety (one A+, six A's, six A-'s). He is the Executive Online Editor of our flagship law review, the Georgetown Law Journal. While in law school, he has burnished his skills in legal research and writing by working as a summer associate with the Chicago law firm of Katten Muchin Rosenman and as an honors legal intern for the Securities and Exchange Commission. In a seminar on anti-corruption in the global context, Dillon wrote a substantial research paper critiquing a case decided by the Second Circuit under the Foreign Corrupt Practices Act. He earned an A+ on this paper, and I can see why. It is a masterpiece of careful legal analysis yet at the same time a fine piece of legal persuasion. Dillon reports that he poured his all into that paper, and it shows.

Dillon's path to law school was quite remarkable. He comes from a working-class household in which only one parent has even a high school degree. Like many others, his family lost their home during the subprime mortgage crisis of the 2000s. Dillon earned a degree in environmental science (with a minor in applied statistics) from the University of Michigan, and after that he worked for four years for a Chicago company that made trading software for hedge funds. He became disturbed by what he saw as legally and morally questionable practices at the firm. This spurred him, for the first time, to consider law school. In law school, he has not only nurtured his interest in one day helping to root out financial fraud, but he has also discovered that he simply loves a good legal question. He relishes legal ambiguity, takes care not to overclaim, and persists until he sees the full dimension of the problem in front of him. He would make an outstanding law clerk.

I hope that this letter is helpful to you in considering Dillon's application for a clerkship. Please let me know if I can be of any further assistance.

Sincerely,

Lisa Heinzerling

Lisa Heinzerling - heinzerl@law.georgetown.edu

**Dillon Lee Rodriguez**
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The following writing sample is from the argument section of a brief in support of a motion opposing a preliminary injunction that I submitted for my Writing for Law Practice class. A summary of the relevant facts is as follows. The brief concerns a fictional pharmaceutical sales representative named Halston Leggett being sued by her former employer, PHC, for breach of a non-compete agreement following her beginning to work for a competing pharmaceutical company, RX. The non-compete forbids Ms. Leggett from marketing drugs "similar to" the drugs she marketed while working for PHC. At PHC, Ms. Leggett marketed an antidepressant called Aura. At RX, Ms. Leggett currently markets an ADHD medication called Targetall, which PHC has argued is "similar to" Aura because it can be prescribed "off-label" to treat certain forms of depression.

The length of this writing sample has been reduced to meet the requirements of the application, and references to exhibits have been omitted. This writing sample has not been edited by anyone other than me.

## LEGAL ARGUMENT

A plaintiff seeking a preliminary injunction must establish, among other factors, (I.) that he is likely to succeed on the merits and (II.) that he is likely to suffer irreparable harm in the absence of preliminary relief.[1] The Supreme Court has characterized a preliminary injunction as "an extraordinary remedy" that may only be awarded upon a "clear showing" that the plaintiff is entitled to such relief.[2] PHC has not made such a "clear showing" here.

### I. PHC Is Not Likely to Succeed on the Merits.

PHC is not entitled to a preliminary injunction because it cannot show that the non-compete is enforceable, or, to the extent that it is enforceable, that the non-compete has been breached.[3]

#### a. The Non-Compete Is Not Enforceable Because it Lacks Valuable Consideration and Contains Overbroad Provisions.

To be enforceable under North Carolina law, a non-compete must be: (1) in writing, (2) made part of an employment contract, (3) based on valuable consideration, (4) reasonable as to time and territory, and (5) no more restrictive than necessary to protect the employer's legitimate business interest.[4] The non-compete is unenforceable because (i.) it was not based on valuable consideration, and (ii.) the terms are unreasonably restrictive and thus overbroad.

##### i. The Non-Compete Lacks Consideration Because Ms. Leggett's Pay Raise and Promotion Were Merit-Based Rewards.

If an employee does not enter into a non-compete at the outset of her employment, any subsequent non-compete must be supported by consideration beyond the promise of continued employment to be enforceable.[5] The benefits the employee receives subsequent to signing the non-

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[1] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
[2] *Id.* at 22.
[3] *See VisionAIR, Inc. v. James*, 606 S.E.2d 359, 363 (N.C. Ct. App. 2004) (requiring moving party to demonstrate enforceability and breach of a non-compete in order to show likely success on the merits).
[4] *See Med. Staffing Network, Inc. v. Ridgway*, 670 S.E.2d 3231, 327 (N.C. Ct. App. 2009). Courts identify a failure on the fifth element as overbreadth. *See id.*
[5] *Kinesis v. Hill*, 652 S.E.2d 284, 292–93 (N.C. Ct. App. 2007). North Carolina courts have held the

compete must be related to and in exchange for the non-compete to constitute consideration.[6] If such benefits are merit-based or consistent with other periodic pay raises, then those benefits are not related to the non-compete, the non-compete was not supported by consideration, and the agreement is thus unenforceable.[7]

In *Mastrom*, an employee who had been in his job for three years accepted a raise that was conditioned upon his signing a non-compete.[8] However, the court explained that the increase in the employee's compensation was not dependent on whether he had signed the non-compete; rather, it was a discretionary, merit-based pay increase consistent with other periodic raises he had normally received during the course of his employment.[9] The court concluded that the raise was not related to the non-compete, and held that the non-compete was unenforceable due to absence of consideration.[10]

The facts of Ms. Leggett's case are similar to *Mastrom*, except that the facts here support the inference that there was not consideration even more strongly than the facts in *Mastrom*. As in *Mastrom*, Ms. Leggett's non-compete was executed during her employment, so it must be supported by additional consideration to be enforceable. At first glance, it would appear that the non-compete was supported by additional consideration because after the meeting in which she signed it, she had a higher salary and a new job title. However, Ms. Leggett's pay raise and

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following benefits all constitute additional consideration: continued employment for a stipulated amount of time; a raise, bonus, or other change in compensation; a promotion; additional training; uncertificated shares; or some other increase in responsibility or number of hours worked. *Hejl v. Hood, Hargett & Assocs.*, 674 S.E.2d 425, 428–29 (N.C. Ct. App. 2009) (citations omitted).

[6] *See Mastrom, Inc. v. Warren*, 196 S.E.2d 528, 530 (N.C. Ct. App. 1973); *James C. Greene Co. v. Kelley*, 134 S.E.2d 166, 168 (N.C. Ct. App. 1964) ("While the defendant from time to time received increases in salary, the evidence fails to relate any of them to the covenant not to compete. The new contract with the restrictive covenant was without consideration—hence invalid.").

[7] *See Mastrom*, 196 S.E.2d at 530; *Kelley*, 134 S.E.2d at 168.

[8] *Mastrom*, 196 S.E.2d at 529.

[9] *Id.* at 530.

[10] *Id.*

promotion were not bargained for and were unrelated to her signing the non-compete. Instead, those benefits were merit-based rewards for past performance and were in line with typical raises and promotions at PHC.

First, Ms. Leggett was informed that promotions and compensation at PHC were tied to performance and that successful salespeople could expect promotions. The meeting in which Ms. Leggett signed the non-compete was in line with those expectations. The meeting began with Mr. Wilson informing Ms. Leggett that she had been promoted and was going to receive a new-salesperson-of-the-year award. There was no mention of a non-compete until the end of the meeting. When the subject of a non-compete finally was introduced, Ms. Leggett was never told that she was required to sign it in order to keep her promotion; she was only *asked* to sign it because it was missing from her file.

Second, just as in *Mastrom*, her raise and promotion were in line with other periodic raises and promotions. Ms. Leggett received the same $2,000 raise in 2020 as she did after she signed the non-compete in 2019, and it is expected for Junior Sales Representatives to be promoted within the first two years at PHC. Third, unlike in *Mastrom*, where a pay raise was explicitly conditioned on a non-compete—which the court there still did not find to constitute additional consideration—compensation was not even mentioned during Ms. Leggett's meeting with Mr. Wilson, and she only learned that her salary had been increased after she happened to notice a higher paycheck amount weeks later. Fourth, unlike in *Mastrom*, where the benefits were referenced in the non-compete, the non-compete here is silent on both compensation and job title. Therefore, the non-compete was not supported by additional consideration, and is thus unenforceable.

Although Ms. Leggett eventually received increased job responsibilities and greater access to confidential information, including trade secrets, those changes are inherent to any promotion

to Sales Representative, and there was no indication at the meeting that Ms. Leggett would only receive them if she signed the non-compete. Therefore, those changes to Ms. Leggett's role did not constitute additional consideration because they were neither bargained for nor were they related to the non-compete.

**ii. The Non-Compete Is Unenforceable Due to Overbreadth.**

In North Carolina, non-compete agreements must be narrowly tailored to a legitimate business interest.[11] If a non-compete forbids an employee from soliciting her former employer's customers with whom the employee did not actually have contact during her former employment, then it is unenforceable due to overbreadth.[12] Similarly, if a non-compete places a prohibition on the employee with respect to potential clients of her former employer, then it is unenforceable due to overbreadth.[13] The non-compete forbids Ms. Leggett from soliciting "any person who is . . . a customer" of PHC, diverting or attempting to divert "any business" from PHC, and "interfer[ing]" with PHC and its business partners. These provisions are unenforceable due to overbreadth because they do not limit the prohibitions to PHC customers with whom Ms. Leggett actually had contact.[14]

The blue-pencil rule cannot save the unenforceable provisions. North Carolina's blue-pencil rule does not allow courts to add or change language from a provision so as to make it reasonable; it only allows courts to delete language that makes the provision unenforceable.[15] If

[11] Copypro, Inc. v. Musgrove, 754 S.E.2d 188, 199 (N.C. Ct. App. 2014).
[12] *See Laboratory Corp. of Am. Hold. v. Kearns*, 84 F. Supp. 3d 447, 459 (M.D.N.C. 2015) (applying North Carolina law).
[13] *See Med. Staffing Network, Inc. v. Ridgway*, 670 S.E.2d 321, 327–28 (N.C. Ct. App. 2009) (holding non-compete that forbid the solicitation of "an unrestricted and undefined set" of potential clients unenforceable).
[14] *See Laboratory Corp. of Am. Hold. v. Kearns*, 84 F. Supp. 3d 447, 459 (M.D.N.C. 2015) (applying North Carolina law).
[15] *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 784 S.E.2d 457, 461 (N.C. 2016).

striking the unreasonable portions of a certain provision leaves no enforceable restriction, that provision will not be enforced at all.[16] The above provisions only can be made reasonable by adding language stipulating that the restriction shall only apply to customers with whom the employee had contact during her employment at PHC. Therefore, the North Carolina blue-pencil rule reaffirms the conclusion that those non-solicitation provisions are unenforceable due to overbreadth.

**b. Even If the Non-Compete Was Enforceable, Ms. Leggett Did Not Breach it.**

Breach-of-contract claims in the non-compete context are contingent on the validity of the unenforceable provisions of the non-compete.[17] Thus, to the extent that the non-compete would be enforceable under North Carolina law, Ms. Leggett did not breach the agreement.

**i. The Non-Compete Did Not Forbid Ms. Leggett from Working for a Competitor.**

PHC alleges that "Ms. Leggett has violated the terms and conditions of the Agreements by accepting employment with RX, a direct competitor." However, the non-compete explicitly allowed Ms. Leggett to work for a competitor.[18] Moreover, in North Carolina, non-competes may not prohibit an employee from working for a competitor without regard to whether the employee's new role actually competes with her former employer.[19] Therefore, Ms. Leggett did not breach the non-competition provisions by accepting a job at RX.

**ii. Targetall Is Not "Similar to" Aura.**

The non-compete prevented Ms. Leggett from marketing drugs at RX that are "similar to"

[16] *Id.* at 462.
[17] *Aesthetic Facial & Ocular Plastic Surgery Ctr. v. Zaldivar*, 826 S.E.2d 723, 733 (N.C. Ct. App. 2019).
[18] The Non-compete states: "This provision does not prevent Employee from seeking or obtaining employment or other forms of business relationships with a competitor . . . ."
[19] *Hartman v. W.H. Odell & Assoc.'s*, 450 S.E.2d 912, 919–20 (N.C. Ct. App. 1994).

the ones she marketed while at PHC.[20] However, there was no breach because Targetall is not "similar to" Aura. First, Aura and Targetall affect two different chemicals in the brain to treat two different conditions. Targetall is a psychostimulant which reduces inattentiveness and hyperactivity by increasing the concentration of noradrenaline in the brain. Aura, on the other hand, is an SSRI antidepressant which alleviates depression by increasing the concentration of serotonin in the brain. Second, whereas Targetall is FDA-approved to treat ADHD but is not FDA-approved to treat depression, Aura is not FDA-approved to treat ADHD but is FDA-approved to treat depression. Third, Targetall's suggested off-label, antidepressant properties are only applicable to a small subset of all depression patients whereas Aura's antidepressant properties are applicable to depression patients generally. According to the "investigational uses" of Targetall in its FDA indications, there has only been "some suggestion" that Targetall "might" be helpful for people that have both ADHD *and major depression*. Finally, whereas Targetall "is an efficacious weight loss medication," patients taking antidepressants—not just Aura—tend to gain weight on average. Therefore, Ms. Leggett did not breach the non-competition provisions because Targetall is not "similar to" Aura.

## II. PHC Has Not Demonstrated a Likelihood of Irreparable Harm If a Preliminary Injunction Is Not Granted.

### a. Any Alleged Harm to PHC Is Not "Actual and Imminent."

In order for an employer to show irreparable harm resulting from a former employee's alleged breach of a non-compete, it must demonstrate that it faces an "actual and imminent" threat of a permanent loss of customers if a preliminary injunction is not granted.[21] A threat of permanent loss of customers without a preliminary injunction is "actual and imminent" where the employer

[20] *See id.* at 2.
[21] *See, e.g.*, *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991).

presents evidence that its former employee has diverted customers to a competitor and plans on continuing to do so.[22]

*Update, Inc. v. Samilow* is on-point here. In *Samilow*, shortly after defendant left his job at an eDiscovery and legal-staffing firm, he formed his own firm offering eDiscovery and legal-staffing services and thereafter began providing those same services to two of his former employer's clients.[23] In support of its motion for preliminary injunction, plaintiff offered evidence showing that defendant had diverted large eDiscovery and legal-staffing projects from plaintiff's clients and that he intended to participate in an event where he likely would present his competing services to prospective clients of plaintiff.[24] First, the court found that the threat of loss of customers was "actual" because plaintiff presented evidence that defendant had solicited and diverted business from plaintiff's clients that defendant serviced during his employment.[25] Second, the court found that the threat was "imminent" because the evidence indicated that defendant "appear[ed] intent" on continuing to divert business to his own firm.[26] The court granted the motion.[27]

First, the harm to PHC is not "actual." In *Samilow*, the employer was able to demonstrate with facts that some of its customers stopped using its services and instead began using the services of its former employee. Here, unlike in *Samilow*, in the nine months between Ms. Leggett's

[22] *See Update, Inc. v. Samilow*, 311 F. Supp. 3d 784, 796 (E.D. Va. 2018); *De Simone v. VSL Pharm.'s, Inc.*, 133 F. Supp. 3d 776, 799–800 (D. Md. 2015) (finding threat to be "actual and imminent" where former employee had plan to disrupt supply chain of former employer's product).
[23] *Samilow*, 311 F. Supp. 3d at 787. Defendant and plaintiff, employee and employer, had entered into a non-competition and non-solicitation agreement. *Id.* at 786.
[24] *Id.* & n.2. One of plaintiff's clients informed plaintiff that it planned on using another vendor for a project; plaintiff offered as evidence in support of its motion the inference that the other vendor was defendant. *Id.* at 787.
[25] *Id.* at 796.
[26] *Id.*
[27] *Id.* at 797.

beginning to work at RX and the filing of its complaint, PHC has not been able to allege that a single PHC customer has begun prescribing Targetall for their depression patients rather than Aura. Relatedly, whereas the parties' services in *Samilow* (eDiscovery and legal staffing) were identical, the only overlap between Targetall and Aura is the narrow set of patients who suffer from both ADHD and major depression. Second, the harm is not "imminent" either. In *Samilow*, the employer was able to identify, with evidence, its former employee's plan to solicit more of its customers. Here, PHC has not offered any evidence that creates the appearance that RX or Ms. Leggett has a plan to divert customers from PHC to RX. Therefore, PHC has not demonstrated irreparable harm.

**b. PHC Has Not Demonstrated that Irreparable Harm Is "Likely."**

Because of the "extraordinary" nature of injunctive relief, a preliminary injunction will not be granted "simply to prevent the possibility of some remote future injury."[28] The moving party must instead demonstrate the likelihood of irreparable harm if a preliminary injunction is not granted.[29] The moving party must also support its arguments with facts; conclusory statements are insufficient to show irreparable harm.[30]

In its complaint, PHC points to Ms. Leggett's social-media activity and her having received confidential information during her employment at PHC as proof that it has been irreparably harmed. However, PHC has not identified facts that show that it has lost or is going to lose customers[31] to RX as a result of Ms. Leggett. For instance, an electronic search of Ms. Leggett's

[28] *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008) (emphasis added).
[29] *Id.*
[30] *See, e.g.*, *MicroAire Surgical Instruments, LLC v. Arthrex, Inc.*, 726 F. Supp. 2d 604, 640 (W.D. Va. 2010) (finding irreparable harm not met where moving party's arguments were "based solely upon conclusory statements").
[31] *See Update, Inc. v. Samilow*, 311 F. Supp. 3d 784, 796 (E.D. Va. 2018) (requiring a showing at least of current harm to grant preliminary injunction).

email and laptop showed that she did not possess any confidential PHC information after her departure from PHC. But even if she did, unless PHC could show that Ms. Leggett used PHC's confidential information against it, her alleged possession of such materials at best only creates a potential for PHC to be harmed, not a likelihood. Therefore, PHC's conclusory statements only identify circumstances that suggest a mere *possibility* of harm absent a preliminary injunction rather than a *likelihood*, a standard that the United States Supreme Court has explicitly rejected for being "too lenient."[32]

**c. PHC Waited an Excessive Amount of Time Before Seeking a Preliminary Injunction.**

The contention that an employer has been irreparably harmed by a former employee's alleged breach of a non-compete is undermined by the employer's taking actions inconsistent with the necessity of its right to the relief contemplated in a non-compete that the employer drafted.[33] Specifically, where a non-compete gives the employer the right to seek a preliminary injunction and specifies that any breach will cause immediate and irreparable harm to the employer but the employer delays seeking a preliminary injunction, a court will not find irreparable harm.[34]

The non-compete in *Southtech Orthopedics, Inc. v. Dingus* specified that "any violation" would cause irreparable harm to the employer in the matter of "only a few days" and that the employer would be entitled to seek injunctive relief in the event of a breach.[35] However, the employer waited at least six weeks to file a motion requesting a preliminary injunction after it had learned of its former employee's breach.[36] The employer spent those six weeks negotiating with

[32] *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008) ("[The] 'possibility' standard is too lenient.").
[33] *Southtech Orthopedics, Inc. v. Dingus*, 428 F. Supp. 2d 410, 420 (E.D.N.C. 2006).
[34] *Id.* at 421.
[35] *Id.* at 420.
[36] *Id.*

its former employee.[37] The court was "reluctant to grant such an extraordinary remedy as a preliminary injunction" because the six-week delay undercut the employer's contention that it would be irreparably harmed in a matter of days.[38] The court then held that the employer had failed to demonstrate a threat of irreparable harm.[39]

The non-compete between Ms. Leggett and PHC and the actions of the employers upon discovering the alleged breach are nearly identical to those in *Dingus*. First, both non-competes provided the employer the right to seek a preliminary injunction in the event of a breach. Second, just as the non-compete in *Dingus* asserted that "any violation" would result in irreparable harm in "only a few days," the non-compete here asserted that "the violation of any covenant . . . will cause immediate and irreparable harm" to PHC.[40] Third, similar to *Dingus*, despite the non-compete's assertion that irreparable harm would immediately follow a breach, approximately sixteen weeks lapsed between PHC's learning of Ms. Leggett's alleged breach and PHC's requesting a preliminary injunction. If PHC itself drafted an agreement that said that any breach would result in *immediate* harm, it makes little sense for PHC to wait sixteen weeks before exercising its right to seek injunctive relief. Therefore, PHC's multi-week delay demonstrates that it has not been irreparably harmed.

## CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Plaintiff's request for preliminary injunction be denied.

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[37] *Id.*
[38] *Id.* at 420–21.
[39] *Id.* at 422.
[40] Courts have declined to find irreparable harm to be established by contract. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008) (emphasizing that movants seeking injunctive relief must demonstrate actual harm).

## Applicant Details

| | |
|---|---|
| First Name | **Max** |
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| Contact Phone Number | **6174551358** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **University of Miami** |
| Date of BA/BS | **May 2016** |
| JD/LLB From | **The University of Chicago Law School**<br>**https://www.law.uchicago.edu/** |
| Date of JD/LLB | **June 13, 2020** |
| Class Rank | **School does not rank** |
| Law Review/Journal | **Yes** |
| Journal(s) | **Chicago Journal of International Law** |
| Moot Court Experience | **No** |

## Bar Admission

| | |
|---|---|
| Admission(s) | **Illinois** |

## Prior Judicial Experience

| | |
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| Judicial Internships/ Externships | **Yes** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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January 26, 2022

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street, Room 701
New York, New York 10007

Re: Application for Clerkship Beginning in August 2024

Dear Judge Liman:

Please consider my application for a clerkship beginning in August 2024. I am a second-year litigation associate at Arnold & Porter in Chicago, where I have gained extensive research, writing, and case management experience. I graduated from the University of Chicago Law School, where I served on the *Chicago Journal of International Law*, practiced in the Environmental Law Clinic, and externed for the Honorable Virginia Kendall at the U.S. District Court for the Northern District of Illinois.

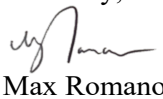
I was influenced to practice law after taking a compliance seminar at the University of Miami, which piqued my interest in U.S. anti-corruption law, the economic consequences of corruption, and how compliance programs work to mitigate the risk. I developed this interest further through studying criminal law in law school and decided to focus my career on white collar defense and investigations. At Arnold & Porter, I gained relevant practical experience, including by conducting an internal investigation concerning allegations of hazing and sexual abuse in the Chicago Park District's lifeguard program.

I am seeking a clerkship with Your Honor to learn from your considerable experience as a commercial and white collar litigator and to solidify my understanding of federal practice and procedure. Additionally, I hope to practice in New York to develop my litigation and investigation skills at the center of white collar enforcement.

I have enclosed my resume, law school grade sheet, undergraduate grade sheet, and writing sample. My former law school professors, Geoffrey Stone and Robert Weinstock, and a current Arnold & Porter partner, John Hagan, Jr., will submit letters recommending me for this position.

Thank you for your consideration. I would be honored to speak at your convenience.

Sincerely,



Max Romanow

# Max Romanow

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## EDUCATION

**The University of Chicago Law School**, Chicago, IL
*Juris Doctor*, June 2020

- Journal: *Chicago Journal of International Law*, Staff Member
- Activities: American Constitution Society, Director of Programming

**University of Miami**, Miami, FL
*Bachelor of Business Administration in Legal Studies*, *summa cum laude*, May 2016

- Activities: Student President, Peer Counseling Program; Orientation Fellow

## EXPERIENCE

**Arnold & Porter Kaye Scholer LLP**, Chicago, IL
*Associate*, January 2021 – Present; *Summer Associate*, June 2019 – August 2019

- Draft summary judgment and *Daubert* briefs, a complaint and answer, written discovery, and formal legal communications to the Court and opposing counsel in contract litigation and pro bono matters.
- Take and defend depositions, perform legal research, and coordinate discovery in contract litigation.
- Conduct internal investigation and complete special report for a unit of the Chicago government.
- Served as pro bono counsel for client to recoup funds from her deceased husband's life insurance policy.

**Abrams Environmental Law Clinic**, Chicago, IL
*Clinical Student*, September 2018 – May 2019

- Drafted testimony and legal briefs arguing in favor of community solar to comply with a statutory mandate to generate 15% of energy supply from renewable energy sources.

**United States District Court for the Northern District of Illinois**, Chicago, IL
*Judicial Extern for the Honorable Virginia Kendall*, June 2018 – August 2018

- Researched legal issues on topics such as civil procedure, criminal procedure, and patent infringement.
- Assisted in drafting judicial opinions, discovery orders, and sentencing reports.

**Thornton Law Firm LLP**, Boston, MA
*Paralegal at Complex Litigation and Personal Injury Law Firm*, June 2016 – July 2017

- Wrote memoranda on topics including pesticide regulations and SEC whistleblower settlements.

## PUBLICATIONS

- Co-Author: *The WeWork Decision and its Implications for Director Email Accounts*, Harvard Law School Forum on Corporate Governance. 2021; The WeWork Decision and its Implications for Director Email Accounts (harvard.edu);
- Co-Author: *Congress Questions Robinhood CEO and Others About Recent Volatility in GameStop's Stock Price and Related Issues*, Arnold & Porter Kaye Scholer LLP Advisory. 2021; Congress Questions Robinhood CEO and Others About Recent Volatility in GameStop's Stock Price and Related Issues | Publications and Presentations | Arnold & Porter (arnoldporter.com);
- Co-Author: *FinCEN Advisory: Financial Institutions should Beware of COVID-19-Related Health Care Fraud*, Arnold & Porter Kaye Scholer LLP Enforcement Edge Blog. 2021; FinCEN Advisory: Financial Institutions should Beware of COVID-19-Related Health Care Fraud | Enforcement Edge | Blogs | Arnold & Porter (arnoldporter.com).

## ADMISSIONS

Illinois, admitted 2021; New York, admitted 2021

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THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

**Name:** Max H Romanow
**Student ID:** 12175434

Scott C. Campbell, University Registrar

## University of Chicago Law School

### Degrees Awarded

Degree: Doctor of Law
Confer Date: 06/13/2020
Degree GPA: 177.967
J.D. in Law

### Academic Program History

Program: Law School
Start Quarter: Autumn 2017
Program Status:Completed Program
J.D. in Law

### External Education

University of Miami
Coral Gables, Florida
Bachelor of Bus Adm 2016

EP or EF (Emergency Pass/Emergency Fail) grades are awarded in response to a global health emergency beginning in March of 2020 that resulted in school-wide changes to instruction and/or academic policies.

### Beginning of Law School Record

Autumn 2017

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 30101 | Elements of the Law<br>Geoffrey Stone | 3 | 3 | 182 |
| LAWS | 30211 | Civil Procedure I<br>Emily Buss | 3 | 3 | 178 |
| LAWS | 30311 | Criminal Law<br>Richard Mcadams | 3 | 3 | 177 |
| LAWS | 30611 | Torts<br>Daniel Hemel | 3 | 3 | 178 |
| LAWS | 30711 | Legal Research and Writing<br>Manisha Padi | 1 | 1 | 179 |

Winter 2018

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 30311 | Criminal Law<br>Genevieve Lakier | 3 | 3 | 177 |
| LAWS | 30411 | Property<br>Daniel Abebe | 3 | 3 | 176 |
| LAWS | 30511 | Contracts<br>Eric Posner | 3 | 3 | 177 |
| LAWS | 30611 | Torts<br>Saul Levmore | 3 | 3 | 178 |
| LAWS | 30711 | Legal Research and Writing<br>Manisha Padi | 1 | 1 | 179 |

Spring 2018

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 30221 | Civil Procedure II<br>Anthony Casey | 3 | 3 | 179 |
| LAWS | 30411 | Property<br>Lior Strahilevitz | 3 | 3 | 176 |
| LAWS | 30511 | Contracts<br>Eric Posner | 3 | 3 | 177 |
| LAWS | 30712 | Lawyering: Brief Writing, Oral Advocacy and Transactional Skills<br>Manisha Padi | 2 | 2 | 180 |
| LAWS | 47301 | Criminal Procedure II: From Bail to Jail<br>Alison Siegler | 3 | 3 | 176 |

Summer 2018

Honors/Awards
The Chicago Journal of International Law, Staff Member 2018-2019

Autumn 2018

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 40101 | Constitutional Law I: Governmental Structure<br>William Baude | 3 | 3 | 177 |
| LAWS | 42401 | Securities Regulation<br>William Birdthistle | 3 | 3 | 180 |
| LAWS | 53263 | Art Law<br>William M Landes<br>Anthony Hirschel | 3 | 3 | 183 |
| LAWS | 90224 | Abrams Environmental Law Clinic<br>Mark Templeton<br>Robert Weinstock | 2 | 2 | 179 |
| LAWS | 94130 | The Chicago Journal of International Law<br>Richard Mcadams | 1 | 1 | P |

Winter 2019

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 41601 | Evidence<br>John Rappaport | 3 | 3 | 181 |
| LAWS | 42801 | Antitrust Law<br>Randal Picker | 3 | 3 | 179 |
| LAWS<br>Req Designation: | 53221 | Current Issues in Criminal and National Security Law<br>Meets Writing Project Requirement<br>Michael Scudder<br>Patrick Fitzgerald | 3 | 3 | 179 |
| LAWS | 90224 | Abrams Environmental Law Clinic<br>Mark Templeton<br>Robert Weinstock | 2 | 2 | 179 |
| LAWS | 94130 | The Chicago Journal of International Law<br>Richard Mcadams | 1 | 1 | P |

Date Issued: 08/12/2020



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THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

**Name:** Max H Romanow
**Student ID:** 12175434

Scott C. Campbell, University Registrar

## University of Chicago Law School

Spring 2019

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 41002 | Legal Profession<br>Barry Alberts | 3 | 3 | 173 |
| LAWS | 43205 | The Constitution Goes to School<br>Justin Driver | 3 | 3 | 176 |
| LAWS | 44121 | Introductory Income Taxation<br>Daniel Hemel | 3 | 3 | 177 |
| LAWS | 90224 | Abrams Environmental Law Clinic<br>Mark Templeton<br>Robert Weinstock | 2 | 2 | 179 |
| LAWS | 94130 | The Chicago Journal of International Law | 1 | 1 | P |
| Req Designation: | | Meets Substantial Research Paper Requirement<br>Richard Mcadams | | | |

Autumn 2019

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 43253 | Regulation of Banks and Financial Institutions<br>Adriana Robertson | 3 | 3 | 177 |
| LAWS | 47201 | Criminal Procedure I: The Investigative Process<br>John Rappaport | 3 | 3 | 177 |
| LAWS | 53406 | Corporate Compliance and Business Integration<br>Forrest Deegan | 2 | 2 | 178 |
| LAWS | 92000 | Greenberg Seminars: Reconciliation in Ireland and South Africa<br>Martha C Nussbaum<br>William Birdthistle | 1 | 1 | P |

Winter 2020

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 42301 | Business Organizations<br>Sarath Sanga | 3 | 3 | 180 |
| LAWS | 43234 | Bankruptcy and Reorganization: The Federal Bankruptcy Code<br>Douglas Baird | 3 | 3 | 177 |
| LAWS | 46101 | Administrative Law<br>David A Strauss | 3 | 3 | 176 |
| LAWS | 53488 | Advanced Topics in Antitrust<br>Eric Posner | 2 | 2 | 178 |
| LAWS | 92000 | Greenberg Seminars: Reconciliation in Ireland and South Africa<br>Martha C Nussbaum<br>William Birdthistle | 0 | 0 | P |

Spring 2020

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| BUSN | 38103 | Strategies and Processes of Negotiation<br>Christopher Bryan | 3 | 3 | A+ |
| LAWS | 40201 | Constitutional Law II: Freedom of Speech<br>Geoffrey Stone | 3 | 3 | EP |
| LAWS | 41101 | Federal Courts<br>William Baude | 3 | 3 | EP |
| LAWS | 92000 | Greenberg Seminars: Reconciliation in Ireland and South Africa<br>Martha C Nussbaum<br>William Birdthistle | 0 | 0 | P |

**End of University of Chicago Law School**

Date Issued: 08/12/2020



KEY TO TRANSCRIPT ON FINAL PAGE

OFFICIAL ACADEMIC DOCUMENT

THE UNIVERSITY OF CHICAGO

## Key to Transcripts of Academic Records

**1. Accreditation:** The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit http://csl.uchicago.edu/policies/disclosures.

**2. Calendar & Status:** The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

**3. Course Information:** Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

**4. Credits:** The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

**5. Grading Systems:**

**Quality Grades**

| Grade | College & Graduate | Business | Law |
|---|---|---|---|
| A+ | 4.0 | 4.33 | |
| A | 4.0 | 4.0 | 186-180 |
| A- | 3.7 | 3.67 | |
| B+ | 3.3 | 3.33 | |
| B | 3.0 | 3.0 | 179-174 |
| B- | 2.7 | 2.67 | |
| C+ | 2.3 | 2.33 | |
| C | 2.0 | 2.0 | 173-168 |
| C- | 1.7 | 1.67 | |
| D+ | 1.3 | 1.33 | |
| D | 1 | 1 | 167-160 |
| F | 0 | 0 | 159-155 |

**Non-Quality Grades**

| | |
|---|---|
| I | **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB). |
| IP | **Pass** (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation. |
| NGR | **No Grade Reported:** No final grade submitted |
| P | **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses. |
| Q | **Query:** No final grade submitted (College only) |
| R | **Registered:** Registered to audit the course |
| S | **Satisfactory** |
| U | **Unsatisfactory** |
| UW | **Unofficial Withdrawal** |
| W | **Withdrawal:** Does not affect GPA calculation |
| WP | **Withdrawal Passing:** Does not affect GPA calculation |
| WF | **Withdrawal Failing:** Does not affect GPA calculation |
| | **Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared. |

**Examination Grades**

| | |
|---|---|
| H | Honors Quality |
| P* | High Pass |
| P | Pass |

**Grade Point Average:** Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: http://registrar.uchicago.edu.

**6. Academic Status and Program of Study:** The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

**7. Doctoral Residence Status:** Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

**Scholastic Residence:** the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

**Research Residence:** the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

**Advanced Residence:** the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

**Active File Status:** a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

**Doctoral Leave of Absence:** the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

**Extended Residence:** the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled Pro Forma does not extend the maximum year limit on registration.

**8. Law School Transcript Key:** The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

**9. FERPA Re-Disclosure Notice:** In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:
http://registrar.uchicago.edu.

Revised 09/2016

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50305091 Student ID | Male Sex | ###-##-0588 SSN

11/02/2017

# UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

Romanow, Max H
1010 Memorial Dr. #5F
Cambridge, MA 02138-4866

Other Institutions Attended
Brooks School
1160 Great Pond Rd
North Andover, MA 01845-1206

Test Credits
Test Credits Applied Toward Undergraduate Business

**FA 2012**

| Course | | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|---|
| HIS | 192 | STUDIES IN HISTORY | 3.000 | 3.000 | CR | 0.000 |

Test Trans GPA: 0.000 Transfer Totals: 3.000 3.000 0.000

Transfer Credits
Transfer Credit from Universidad Intl Menendez Pelayo Barcelona
Applied Toward Undergraduate Business Program

Summer 2013

| Course | | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|---|
| SPA | 100T | TRANSFER CREDIT ELECTIVE | 6.000 | 6.000 | CR | 0.000 |

Course Trans GPA: 0.000 Transfer Totals: 6.000 6.000 0.000

**Beginning of Undergraduate Record**

**Fall 2012**

Undergraduate Business
Legal Studies Major

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| BSL 212 | INTRO TO BUS LAW Writing Credit | 3.000 | 3.000 | A | 12.000 |
| ENG 105 | ENG COMPOSITION I | 3.000 | 3.000 | A | 12.000 |
| MAS 110 | QUANT APPL IN BUS | 3.000 | 3.000 | A | 12.000 |
| MGT 100 | FIRST STEP | 3.000 | 3.000 | A | 12.000 |
| PHI 101 | INTRO TO PHI Writing Credit | 3.000 | 3.000 | A+ | 12.000 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 4.000 | UM Semester Totals | 15.000 | 15.000 | 60.000 |
| | | Sem Course/Test Transfer Totals | 3.000 | | |
| | | Semester Combined Totals | 18.000 | 15.000 | 60.000 |
| UM Cum GPA | 4.000 | UM Cumulative Totals | 15.000 | 15.000 | 60.000 |
| | | Cum Course/Test Transfer Totals | 3.000 | | |
| | | Cum Combined Totals | 18.000 | | |

Term Honor: PRESIDENT'S & PROVOST'S HONOR ROLLS & DEAN'S LIST

**Spring 2013**

Undergraduate Business
Legal Studies Major

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| CIS 160 | BUS ANALYTICS | 3.000 | 3.000 | A- | 11.100 |
| ECO 211 | ECON PRIN & PROBS | 3.000 | 3.000 | A | 12.000 |
| ENG 106 | ENG COMPOSITION II | 3.000 | 3.000 | A | 12.000 |
| MAS 201 | INTRO BUS STAT | 3.000 | 3.000 | A | 12.000 |
| MKT 201 | FOUND OF MKT | 3.000 | 3.000 | A- | 11.100 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 3.880 | UM Semester Totals | 15.000 | 15.000 | 58.200 |
| UM Cum GPA | 3.940 | UM Cumulative Totals | 30.000 | 30.000 | 118.200 |
| | | Cum Course/Test Transfer Totals | 3.000 | | |
| | | Cum Combined Totals | 33.000 | | |

Term Honor: PROVOST'S HONOR ROLL & DEAN'S LIST

**Fall 2013**

Undergraduate Business
Legal Studies Major
Music Business & Entertainment Industries Minor

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| ACC 211 | PRIN FINANCIAL ACC | 3.000 | 3.000 | B | 9.000 |
| ECO 212 | ECON PRIN & PROBS | 3.000 | 3.000 | A | 12.000 |
| MAS 202 | INTERMED BUS STAT | 3.000 | 3.000 | A+ | 12.000 |
| MGT 904 | ORGNIZTNL BEHAVIOR | 3.000 | 3.000 | A | 12.000 |
| MGT 498 | SELECTED TOPICS | 2.000 | 2.000 | CR | 0.000 |
| PSY 110 | INTR TO PSYCHOLOGY | 3.000 | 3.000 | A+ | 12.000 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 3.800 | UM Semester Totals | 17.000 | 15.000 | 57.000 |
| UM Cum GPA | 3.893 | UM Cumulative Totals | 47.000 | 45.000 | 175.200 |
| | | Cum Course/Test Transfer Totals | 9.000 | | |
| | | Cum Combined Totals | 56.000 | | |

Term Honor: PROVOST'S HONOR ROLL & DEAN'S LIST

Karen Beckett
UNIVERSITY REGISTRAR

50305091 Student ID | Male Sex | ###-##-0588 SSN

11/02/2017

Romanow, Max H
1010 Memorial Dr. #5F
Cambridge, MA 02138-4866

# UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

env: 1242_page: 3 of 4

### Spring 2014

Undergraduate Business
Legal Studies Major
Music Business & Entertainment Industries Minor

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| ACC 212 | MANAGERIAL ACC | 3.000 | 3.000 | A | 12.000 |
| KIN 150 | GENNUTRNHLTHFIT | 3.000 | 3.000 | A+ | 12.000 |
| KIN 201 | INTRO TO SPORT ADM | 3.000 | 3.000 | A | 12.000 |
| MGT 303 | OPERATIONS MGT | 3.000 | 3.000 | A | 12.000 |
| MGT 498 | SELECTED TOPICS | 2.000 | 2.000 | CR | 0.000 |
| MMI 173 | MULTINAT RC MU IND | 3.000 | 3.000 | A | 12.000 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 4.000 | UM Semester Totals | 17.000 | 15.000 | 60.000 |
| UM Cum GPA | 3.920 | UM Cumulative Totals | 64.000 | 60.000 | 235.200 |
| | | Cum Course/Test Transfer Totals | 9.000 | | |
| | | Cum Combined Totals | 73.000 | | |

### Fall 2014

Undergraduate Business
Legal Studies Major
Music Business & Entertainment Industries Minor
Management Additional Major

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| BSL 401 | THE LAW FIN TRN | 3.000 | 3.000 | A- | 11.100 |
| ECO 302 | MICRO ECON THEORY | 3.000 | 3.000 | B+ | 9.900 |
| ENG 230 | ADV.BUSINESS COMM Writing Credit | 3.000 | 3.000 | A | 12.000 |
| FIN 302 | FUNDMNTLS OF FIN | 3.000 | 3.000 | B+ | 9.900 |
| MGT 422 | LEADING TEAMS | 3.000 | 3.000 | A | 12.000 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 3.660 | UM Semester Totals | 15.000 | 15.000 | 54.900 |
| UM Cum GPA | 3.868 | UM Cumulative Totals | 79.000 | 75.000 | 290.100 |
| | | Cum Course/Test Transfer Totals | 9.000 | | |
| | | Cum Combined Totals | 88.000 | | |

Term Honor: DEAN'S LIST

### Spring 2015

Undergraduate Business
Legal Studies Major

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| BSL 304 | CORPORATE LAW | 3.000 | 3.000 | A | 12.000 |
| BSL 324 | NEGOTIATION | 3.000 | 3.000 | A | 12.000 |
| CIS 410 | INFORM SYS & TECH | 3.000 | 3.000 | A- | 11.100 |
| ENG 210 | LIT THEMES & TOPCS | 3.000 | 3.000 | A | 12.000 |
| Course Topic: | Rulership & Politics of Resist | | | | |
| MKT 340 | PRO SELLING | 3.000 | 3.000 | A | 12.000 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 3.940 | UM Semester Totals | 15.000 | 15.000 | 59.100 |
| UM Cum GPA | 3.880 | UM Cumulative Totals | 94.000 | 90.000 | 349.200 |
| | | Cum Course/Test Transfer Totals | 9.000 | | |
| | | Cum Combined Totals | 103.000 | | |

Term Honor: PROVOST'S HONOR ROLL & DEAN'S LIST

### Fall 2015

Undergraduate Business
Legal Studies Major

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| BSL 460 | HLTH CARE LW & ETH | 3.000 | 3.000 | A | 12.000 |
| BSL 476 | THE LAW OF RISK | 3.000 | 3.000 | A | 12.000 |
| COS 211 | PUBLIC SPEAKING | 3.000 | 3.000 | A | 12.000 |
| HIS 341 | HIS OF THIRD REICH Writing Credit | 3.000 | 3.000 | A | 12.000 |
| POL 388 | POLITICS OF ISRAEL | 3.000 | 3.000 | A | 12.000 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 4.000 | UM Semester Totals | 15.000 | 15.000 | 60.000 |
| UM Cum GPA | 3.897 | UM Cumulative Totals | 109.000 | 105.000 | 409.200 |
| | | Cum Course/Test Transfer Totals | 9.000 | | |
| | | Cum Combined Totals | 118.000 | | |

Term Honor: PRESIDENT'S & PROVOST'S HONOR ROLLS & DEAN'S LIST

### Spring 2016

Undergraduate Business
Legal Studies Major

| Course | Course Title | Attempted | Earned | Grade | Qty Pts |
|---|---|---|---|---|---|
| BSL 435 | MANAGNG LEG FACTOR | 3.000 | 3.000 | A | 12.000 |
| CLA 314 | CLAS LATIN LIT/CUL | 3.000 | 3.000 | A | 12.000 |
| ENG 232 | ADV WRI PEOPLE SOC Writing Credit | 3.000 | 3.000 | A | 12.000 |
| GSC 107 | NATURAL DISASTERS | 3.000 | 3.000 | A+ | 12.000 |
| MGT 401 | STRATEGIC MGT Writing Credit | 3.000 | 3.000 | A- | 11.100 |

| | | | Earned Credits | Graded Credits | Qty Pts |
|---|---|---|---|---|---|
| UM Semester GPA | 3.940 | UM Semester Totals | 15.000 | 15.000 | 59.100 |
| UM Cum GPA | 3.903 | UM Cumulative Totals | 124.000 | 120.000 | 468.300 |
| | | Cum Course/Test Transfer Totals | 9.000 | | |
| | | Cum Combined Totals | 133.000 | | |

Karen Beckett
UNIVERSITY REGISTRAR

CREDENTIALS SECURITY SEAL (C) IN THE CORNER SHOULD TEMPORARILY DISAPPEAR WHEN PHOTOCOPIED

11/02/2017

50305091 Student ID | Male Sex | ###-##-0588 SSN

Romanow, Max H
1010 Memorial Dr. #5F
Cambridge, MA 02138-4866

**UNIVERSITY OF MIAMI**

MIAMI

**CORAL GABLES, FLORIDA 33124**

Degrees Awarded

| | |
|---|---|
| Degree: | BACHELOR OF BUSINESS ADMINISTRATION |
| Confer Date: | 05/06/2016 |
| Degree Honors: | Summa Cum Laude |
| | Legal Studies Major |

End of Official transcrpt UGRD/GRAD

GREAT SEAL UNIVERSITY OF MIAMI CORAL GABLES FLORIDA 1925

Karen Beckett
UNIVERSITY REGISTRAR

Page 3 of 3

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grv: 1242, page: 4 of 4

March 01, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007-1312

Dear Judge Liman:

I am a Partner in the Complex Litigation Group in the Chicago Office of Arnold & Porter and write to recommend Max Romanow enthusiastically to serve as one of your next law clerks. I have known Max for more than two years, first when he worked with me as a Summer Associate in 2019 and, most recently, as my go-to junior associate over the last seven plus months for many of my most important matters.

I have practiced for almost 25 years and for three law firms with many extraordinary lawyers (Kirkland & Ellis, Reed Smith, and now Arnold & Porter) and, in my opinion, Max is one of the very bestjunior litigation associates I have ever encountered. Perhaps the best evidence of my faith in Max's abilities is that, within months of joining the firm, I assigned Max work that is typically reserved for midlevel or senior associates, including: (a) defending depositions; (b) participating in (and sometimes leading) key witness preparation sessions and client meetings; and (c) drafting large sections of important pleadings and briefs. For each of those significant tasks, Max was always well prepared, and his performance impressed both me and the clients alike. Max also ran (and successfully resolved) an entire pro bono matter with minimal supervision from me. Max's excellent work on that pro bono case included handling, on his own, all aspects of witness interviews and settlement negotiations.

As his impressive resume and many accomplishments suggest (and as my firsthand knowledge can confirm), Max is extremely bright and is both a talented writer and advocate. But, equally important to success at any legal job, Max is earnest, dependable, trustworthy, and hard working. Max is also eager to learn new things and takes constructive criticism in stride.

If you afford Max the opportunity of an interview, Your Honor will likely also hear about Max's many life experiences that demonstrate the high level of respect his peers have had for him throughout his educational journey. Max's peers, for example, have voted Max to positions of leadership and trust all throughout his high school, college, and law school years. Those opportunities speak to Max's strong character which was one of the more important reasons Arnold & Porter recruited Max aggressively for both our Summer Associate program and then again to join us on a fulltime basis.

Max's strong people skills (plus a good sense of humor) have also made him well-liked by everyone at the firm. Max, in turn, has also been a great firm citizen who serves on our Summer Associate Hiring Committee (another strong indicator of respect by his peers) and frequently interviews and helps recruit prospective summer associates.

What has perhaps impressed me the most about Max's work is his ability to digest, understand, and analyze complex fact pattens and legal issues quickly. Indeed, Max has proven himself to be a "quick study" on a wide variety of cases and concerning many different areas of the law. That trait should serve him particularly well as a district court law clerk where the dockets are invariably quite diverse, and clerks are expected to absorb a great volume of information in a short period of time.

I personally know Max's desire to clerk has been strong and sincere ever since he had such a positive experience externing for Judge Virginia Kendall following his first year of law school. Max misses the many great opportunities that experience provided him to observe courtroom activities and learn how federal judges make decisions and manage their courtrooms. Although I personally (and the firm as a whole) will miss Max during the year(s) he decides to clerk, pursuing that opportunity now will help him continue to grow as an advocate, lawyer, and person while also fulfilling one of his important career objectives. I have thoroughly enjoyed working with Max over the past two years and I'm confident he would make an outstanding addition to any Judge's roster of law clerks.

Please do not hesitate to contact me should you have any questions about Max or the content of this recommendation.

Sincerely,

John Hagan

John Hagan - John.Hagan@arnoldporter.com

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

My name is Robert Weinstock; I am an Assistant Clinical Professor of Law at the University of Chicago Law School, where I am one of two supervising faculty members in the Abrams Environmental Law Clinic. I write to express my unqualified and enthusiastic recommendation in support of Max Romanow's application to be a clerk in your chambers. Max worked in our Clinic for the entirety of the 2018-19 academic year and he made central contributions to complex administrative litigation matters for a client organization with limited resources and ambitious goals. In my estimation, Max will assuredly succeed as a law clerk because of his pragmatic and critical thinking, focused research and writing, and strong professionalism and communication skills.

Max was a valued part of our Clinic's representation of a grassroots energy democracy organization based in Highland Park, Michigan, called Soulardarity. Soulardarity is a small, community-based organization, formed by Highland Park residents a decade ago to advance community-based energy solutions when the investor-owned electric utility repossessed community streetlights because the under-resourced municipal government was in arrears on its energy bills. We represent Soulardarity in a range of administrative litigation proceedings before the Michigan Public Service Commission, an agency governed by an extensive and unique body of procedural rules and substantive precedent. Commission proceedings focus on idiosyncratic legal, economic, and technical subject matter but proceed through familiar—though tailored—stages, including discovery via interrogatories and document production, drafting of written testimony from fact and expert witnesses, live cross-examination, and multiple rounds of briefing before both an administrative law judge, who reaches a proposed decision, and, ultimately, the Commissioners themselves.

Max had opportunities to work through almost every litigation stage in one proceeding – a review of the utility's proposed spending and rates – and to help our team launch another – a review of the utility's proposal for assessing its electricity generation needs and resources over the medium- and long-term. We called upon each of Max's skillsets – his strong intellect, effective writing, and characteristic professionalism – to serve a client that heavily relies on its legal team to navigate the legal, technical, and economic aspects of the regulated electric utility industry and translate broad social and economic goals into a focused and challenging legal forum. Max never failed to answer that call.

First, our work for Soulardarity demanded that Max apply a pragmatic and technical analytical approach. As a general matter, our client is pushing the Commission to consider more broadly and seriously objections to utility plans based on racial and socioeconomic equity arguments, which are concerns largely novel to an administrative body that traditionally views itself as an "economic" regulator focused on assuring proper utility accounting. In the rate proceeding, Max examined how the utility approached safety and reliability issues in its electricity transmission network to critique the utility's proposed spending as inappropriately ignoring the disparate impacts of its poor reliability record. This required Max to process hundreds of pages of financial and engineering testimony, exhibits and discovery responses through our client's lens of ensuring equitable service for low-income and people of color communities. This task involved particular analytical dexterity, as the utility did not present its information or proposals in a format that tracked directly with other sources of demographic or socioeconomic information. Max first had to understand the utility's complex materials and then find ways to assess them in light of those exogenous sources of information, whether that was through forcing the utility to refine or clarify its positions through targeted discovery or through our own layering of external information sources atop what the utility had provided. Max made mature and thoughtful suggestions about how to best leverage our client's and Clinic's limited resources, where to seek expert assistance, and how to best connect our analyses to legal arguments novel to the Commission and not explicitly contemplated by its sources of statutory authority. In generating innovative legal arguments rooted in the relevant statutory authority and Commission case law, Max laid the groundwork for lines of attack that we pressed in the rate proceeding and continue to advance in subsequent Commission proceedings.

Second, Max deftly researched and drafted a wide variety of written work product; he successfully translated deep and insightful legal and factual research into clear and persuasive written advocacy. As mentioned above, Commission proceedings require several distinct written submissions and Max produced discovery requests, our client's written testimony, and sections of several briefs. Building upon his comprehensive analysis of the safety and reliability material in the rate proceeding, Max developed arguments for greater prioritization of safety and reliability spending in low income and people of color communities, using additional facts gleaned from other Commission proceedings and legal arguments based in general statutory requirements and filtered through prior Commission rulings. The argument sections of briefs that Max wrote on these issues were a wonderful example of classic approaches to statutory interpretation issues in a complex regulatory field. Max also demonstrated research and drafting flexibility when he produced written testimony in the integrated planning proceeding, appropriately striking a tone for our client's political and social positions distinct from that of a legal brief. Max drafted the portions of our direct testimony that pushed the utility to plan for more distributed energy generation in communities, i.e. solar projects located in and owned by members of particular communities. Max built on previously collected resources and identified new sources through wide-

Robert Weinstock - rweinstock@uchicago.edu

ranging research. This work also involved close coordination with the client to determine which substantive positions we should advance and what our best support would be for those positions in terms of research and real-world examples. Max both channeled our client's voice and positioned the testimony for persuasive application in future briefing.

It is also important to note that Max did a very nice job with less formal writing that demonstrated his panoply of developed skills. I have several notes reflecting concise and well-written emails to our client that prioritized action and quickly delivered bottom-line analyses of complex material like other parties' briefs or discovery responses. One example stands out: Max drafted an email assessing the Administrative Law Judge's preliminary order in the rate proceeding, which spanned hundreds of pages and featured a mix of rulings we supported and opposed across a dozen or so complicated issues. Max did a fantastic job of digesting that order, prioritizing which issues to summarize, presenting those issues succinctly, and orienting the entire communication toward useful legal and strategic advice as to how we could best advocate for the full Commission to adopt or reject portions of the order. Though in email form, this client communication was a phenomenal showpiece for Max's mastery of sophisticated legal analysis, succinct drafting, keen strategic insight, and deep understanding of our client.

Third, Max produced this high-level legal work while navigating a variety of professional relationships and demands with affability and aplomb: Max was a positive and appreciated teammate to his student colleagues, a reliable and productive contributor to his supervisors, and a trusted and invaluable servant to his client. Max and his two teammates produced work product seamlessly, adjusting to each other's constraints and respectfully improving each other's drafts. From my perspective as his supervisor, Max exhibited outstanding professionalism skills: he delivered high-quality work on time, worked through problems independently when possible, identified and utilized available resources effectively, and communicated efficiently to provide updates and seek guidance. Max and his teammates also successfully developed intentional strategies to best serve a client stretched thin by competing demands through scheduling working sessions and crafting extremely clear, succinct and actionable client communications. Impressively, Max also gained the trust of our client's executive director, who is a demanding consumer of legal services with a deep understanding of and strong opinions on the subject matter. The client even trusted Max to provide a statement during a press conference regarding the outcomes of our work.

Finally, I should add that Max contributed all of this excellent work as an advocate while juggling his other obligations as a leading student at the Law School. I was impressed consistently by Max's ability to perform so well in our Clinic while succeeding in his other course work, contributing to his journal, and being a student leader with the American Constitution Society. His peers liked and looked up to him and his supervisors and clients trusted and respected him. Max is as collegial and pleasant as he is unflappable and productive, a wonderful blend of a sharp mind and kind soul.

It is truly an honor and pleasure to recommend Max to be a law clerk in your chambers without reservation. I have worked closely with Max and witnessed consistently and directly an array of impressive traits that position him well to be a fantastic law clerk. I would welcome the opportunity to speak further on his behalf; please do not hesitate to contact me if there is anything I can do to assist.

Sincerely,

Robert Weinstock
Assistant Clinical Professor of Law
Abrams Environmental Law Clinic
University of Chicago Law School
6020 S. University Avenue Chicago, IL 60637
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Professor Geoffrey R. Stone
Edward H. Levi Distinguished Service
Professor of Law
The University of Chicago Law School
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March 08, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing in support Max Romanow's application to serve as your law clerk. Max is a 2020 graduate of The University of Chicago Law School. While a student, he was enrolled in two of my courses – Elements of the Law in his first quarter of law school and Constitutional Law II (Freedom of Speech and of the Press) in his final quarter of law school. In case you're not familiar with it, Elements of the Law is a course first created by Edward Levi and Karl Llewellyn in the 1950s to introduce new law students to the core concepts of legal and judicial analysis. Max did a terrific job in the course. Not only did he receive a grade on the exam (182) that placed him in the top 5% of the class, but his participation in class was excellent and in our many out-of-class discussions I always found him to be lively, curious and quite engaging.

In my Con Law II course in the spring of 2020 we were already in COVID-world so I taught the course on Zoom and the exam was pass/fail. Because the exam was pass/fail (my only experience ever with such grading) I assumed the exams would be mediocre at best and that I could quickly and easily give them all a Pass. But to my amazement the students wrote exams that were every bit as good as usual, so I wound up spending a whole week carefully reading and grading all the exams, even though all the students received a grade of Pass. I then told the students that if they wanted to see their "shadow grade" I was happy to send it to them. I don't recall whether Max asked to see his shadow grade, but in preparation for writing this letter I went back to look and he earned a shadow grade of 183 – one of the top grades in the class.

Max's overall grades in the Law School placed him in approximately the top third of the graduating class. Apparently, he did especially well in my classes. I had many interactions with Max while he was in law school, dealing not only with my courses but also with his work on the International Law Journal and his leadership role with the American Constitution Society. I have always found him to be smart, thoughtful and creative, and I am happy to recommend him. If I can be of any further assistance in this matter, please don't hesitate to reach out to me.

With warm best wishes.

Geoffrey R. Stone
Edward H. Levi Distinguished Service Professor of Law
The University of Chicago

# Writing Sample
## Max Romanow

I wrote the enclosed writing sample for an Art Law seminar.

The essay is about a sculpture known as the "Victorious Youth." In 2018, Italy's Court of Cassation ruled that the Victorious Youth must be returned to Italy from the J. Paul Getty Museum in California. The essay discusses the history of the sculpture, the basis for the Court of Cassation's decision, and how its judgment could be enforced in the United States. This sample does not include developments that may have occurred since I originally submitted the essay.

From https://www.artcrimeresearch.org:

Writing Sample
Max Romanow

# The Curious Case of the Victorious Youth: Will the Sculpture Return to Italy?

## 1. Introduction

In November 2018, Italy's top court ruled that the Greek sculpture known as the "Victorious Youth"[1] must be forfeited to the Italian government.[2] This ruling came as part of a decades-long legal standoff between Italian authorities and the J. Paul Getty Museum ("the Getty") of Malibu, California. The ruling is puzzling for several reasons. One reason is that an earlier court judgment found insufficient evidence that the Bronze was discovered in Italian waters and therefore could not be considered connected to the Italian patrimony.[3] Another reason is that other court judgments found that persons charged with its illicit export could not be identified within the statutory period.[4] Further, new fact discovery and additional prosecutions are unlikely because the fishermen who recovered the sculpture are dead and the Bronze has been in Malibu for several decades. But despite this background, the Italian Court of Cassation affirmed an order requiring its forfeiture. The complicated history of this dispute, the Getty's refusal to include the Bronze in past settlement negotiations, and the Getty's vow to fight any adverse order all suggest this ruling is only the start of a new battle.

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[1] The sculpture is also known as the "Getty Bronze" or more simply the "Bronze."

[2] Gala Pianigiani, "Italian Court Rules Getty Museum Must Return a Prized Bronze," The New York Times (Dec. 4, 2018), https://www.nytimes.com/2018/12/04/arts/design/getty-bronze-italy-ruling.html?module=inline.

[3] Alessandro Chechi, Raphael Contel, and Marc-André Renold, "Victorious Youth – Italy v. J. Paul Getty Museum," ArThemis, Art-Law Centre, University of Geneva, https://plone.unige.ch/art-adr/cases-affaires/victorious-youth-2013-italy-v-j-paul-getty-museum.

[4] *See* Alessandra Lanciotti, *The Dilemma of the Right to Ownership of Underwater Cultural Heritage: The Case of the "Getty Bronze," in* CULTURAL HERITAGE, CULTURAL DIVERSITY: NEW DEV. IN INT'L L. 301, 304 n. 13 (Silvia Borelli & Federico Lenzerini eds., 2012).

Writing Sample
Max Romanow

This essay first explores the fascinating history of the Bronze. It then examines relevant court rulings and the dispute's current legal posture. The third section analyzes three ways a forfeiture order could be enforced in the United States: (1) under international law, (2) through a Mutual Legal Assistance Treaty ("MLAT"), or (3) under the National Stolen Property Act ("NSPA").[5]

2. The Bronze's History

*a. Discovery and Provenance*

The Bronze was discovered in 1964 when Italian fishermen pulled it from the Adriatic Sea off the coast of Fano, Italy. The body was mostly intact, but had no feet, deeply embedded eyes, and was otherwise laden with marine deposits such as shells and mud.[6] Some experts believe the Bronze was created by a Greek sculptor named Lysippos during the fourth century B.C.[7] Others contend it was built in the second or third century B.C.[8] Most agree that it was eventually plundered by Roman soldiers, later lost in transport, and resting under water for some 2,000 years before the 1964 discovery.

Instead of relinquishing their find to Italian authorities, the fishermen sensed a business opportunity.[9] But rumors of the discovery quickly spread and the fishermen kept it on the move, first sneaking it ashore and then hiding it in the home of the captain's cousin. When its stench was

[5] 18 U.S.C. §§ 2314 *et seq.*

[6] CAROL C. MATTUSCH, THE VICTORIOUS YOUTH 9–25 (Getty Publications 1997).

[7] *See, e.g., id.* at 21.

[8] *See, e.g., id.* at 93.

[9] The information from this paragraph is sourced from JASON FELCH & RALPH FRAMMOLINO, CHASING APHRODITE 12 (2011).

too strong to conceal, its handlers buried it in a nearby cabbage field. Suitable buyers were notified and vetted, and the fishermen found an antiquarian named Giacomo Barbetti who paid the equivalent of $4,000 for the sculpture. Barbetti then moved it to a church in Gubbio to be hidden by one Father Giovanni Nagni. Antiquities dealers from across Europe came to view the discovery, but it was again in transit after Italy's national police, the Carabinieri, was tipped off. The sculpture's trail went dark, but eventually a European art consortium named Artemis bought the sculpture, which later resurfaced in London after having an alleged three-year stint in a Brazilian monastery. Heinz Herzer, a German antiquities dealer, then shipped the Bronze to his Munich studio in 1972 where he and a conservation expert analyzed and cleaned it for weeks. Herzer received the opinion of Bernard Ashmole, a prominent art curator, that the statue had immense value and importance.

Ashmole contacted art collector and oil magnate J. Paul Getty, who agreed to buy the Victorious Youth for $3.9 million provided certain assurances were made.[10] Getty wanted "clarification of how the bronze had left Italy, legal research certifying that Herzer's consortium had clear title, and a written guarantee from the Italian Ministry of Culture and the Carabinieri that there would be no further claims."[11] Getty also requested that Artemis fully guarantee the statue for five years in case any state government filed a patrimony claim.[12] The deal unraveled after

[10] Some scholarship insists Getty's apprehension about the price was the only factor holding up the sale. *See* Luis Lee and Amelia L.B. Sargent, "The Getty Bronze and the Limits of Restitution," 20 CHAP. L. REV. 25, 31 (2017). But Lee and Sargent — then attorneys at Munger, Tolles & Olsen LLP, which advised the Getty on the Bronze — omitted Getty's requested assurances and his reservations about the statue's title.

[11] FELCH, *supra* note 9, at 20.

[12] *Id.*

Writing Sample
Max Romanow

Italian police unsuccessfully attempted to have Herzer extradited for trafficking in looted art. But after Getty died in July 1976 and left nearly $700 million to the Getty Museum, the Getty's curatorial staff unanimously voted to buy the Bronze for $3.95 million, apparently without the assurances sought by Getty. In November 1977, the statue arrived in Malibu where it has remained on display since.

*b. Legal and Political History*

Legal and political disputes about the Bronze have been ongoing since the 1960s. One early proceeding arose from the sale and transfer of the Bronze. After it disappeared from Father Nagni's church, the Carabinieri sought theft charges against the fishermen, the antiquarian Barbetti, Barbetti's relatives, and Father Nagni.[13] The charges were brought under Article 49 of Italian Law No. 1089 (1939), "a patrimony law providing that protected archaeological objects found from excavations or by chance within Italian territory belong to the Italian State," and "Article 67 of the same law, which provides that one who takes possession of such archaeological objects is guilty of theft."[14] In 1966, the Magistrate Court of Perugia acquitted the Barbettis and Father Nagni because there was insufficient record evidence that the sculpture was of artistic and archaeological interest[15] and because witnesses at trial testified that the Bronze was discovered in Yugoslav, not Italian, waters.[16] However, the Court of Appeals of Perugia reversed the acquittal, finding the "Bronze was of sufficient archeological value under the Patrimony Law because it was purchased

[13] FELCH, *supra* note 9, at 13.
[14] Lee, *supra* note 10, at 28.
[15] *Id.*
[16] *Id.* at 29.

for a not insignificant sum, and a well-known dealer … had shown interest in the statue. . . ."[17] The Court of Appeals also found that Barbetti would not have concealed the Bronze had he not been violating the law.[18] In 1968, the Court of Cassation reversed the Court of Appeals because "the facts introduced at trial did not resolve the question of the Bronze's 'origin from excavations or chance discovery on national territory'—a necessary element of the crime."[19] The defendants went free, but notably Barbetti and Father Nagni had admitted to purchasing the Bronze and selling it to an individual from Milan.[20]

A later dispute involved the antique dealer Herzer. While Getty was negotiating its purchase, Italian and German police sought information from Herzer about the sculpture's history and asked him about its disappearance from Italy and its alleged hideout in Brazil.[21] But Herzer refused to cooperate and German authorities later did not cooperate with the Italian prosecutor seeking Herzer's extradition on charges for trafficking in looted art.[22]

An action seeking the Bronze's return to Italy failed in 1976 and again in 1977, because the Magistrate Court of Gubbio could not identify persons guilty of illicit exportation within the

[17] *Id.*

[18] *Id.*

[19] *Id.* (citing Supreme Court of Cassation No. 1291, May 22, 1968, 8(It.); *see also* FELCH, *supra* note 9, at 13.

[20] Dr. Derek Fincham, "Transnational Forfeiture of the Getty Bronze," 32 CARDOZO ARTS & ENT. L. J. 471, 477 (2014).

[21] FELCH, *supra* note 9, at 20.

[22] *Id.*

statutory period.[23] Around the same time, Italian officials requested two investigations by German authorities, both of which concluded the Bronze could be freely transferred.[24]

Lawsuits stalled between the 1970s and the 2000s as the international community declined to assist Italy in its efforts. The Gubbio court unsuccessfully sought help from Interpol in 1977 and the State Department rebuffed requests for assistance in 1978. U.S. Customs did not pursue the case beyond an interview of the Getty's registrar.[25] In 1984, Interpol terminated an investigation when Italy did not provide evidence of its ownership of the Bronze.[26] And later in 1989, the Getty refused another request to return the sculpture to Italy. The Getty director's public declination noted the small "possibility [that the statue was] related to Italian cultural heritage" and that it had only a "tenuous relation to Italy's patrimony."[27]

Public controversy again arose in 1995. In an investigation initially unrelated to the Bronze, authorities raided the warehouse of an Italian antiquities dealer and found evidence that objects had been illegally excavated and sold.[28] The investigation led to criminal charges against Marion True, a former Getty curator, for the purchase of stolen antiquities. The prosecution was ultimately dismissed because the statute of limitations had run, but the raid reignited demands for the Bronze's return to Italy. In light of the shift in public opinion, Italian authorities sought 40 works

[23] Lanciotti, *supra* note 4, at 304 n. 13.

[24] Lee, *supra* note 10, at 32.

[25] *Id.*

[26] *Id.*

[27] Fincham, *supra* note 20, at 480 (internal quotation marks omitted).

[28] *Id.* at 481.

held by the Getty, including the Bronze.[29] In 2008, the Getty agreed to return 26 works, but refused to return the Bronze.[30]

*c. Forfeiture Orders*

In 2007, an Italian activist group "Le Cento Cittá" petitioned the Public Prosecutor's office to seek the Bronze's return to Fano. In 2009, the prosecutor sought its confiscation due to its illegal exportation out of Italy, even though the same charges had been dismissed in 2007 because the statute of limitations had run and one of the accused defendants had died. Despite these hurdles, the Pre-Trial Judge treated the case as new and ordered forfeiture "wherever [the sculpture] is situated."[31] The judge ruled that the Bronze's removal violated Italian export and patrimony laws.[32]

The case reached the Court of Cassation in 2018 after several appeals and interim orders. That year, both the Pesaro tribunal and the Court of Cassation rejected the Getty's appeals and affirmed the forfeiture.[33] So somehow, despite the death of key individuals, the earlier findings of insufficient evidence on numerous issues, the expiration of the statute of limitations, a 2009 finding prior to the initial forfeiture order that the Getty "was to be considered a good-faith owner,"[34] that a picture of the Bronze given by an Italian merchant to the Carabinieri in 1977 was the only

[29] Kate Fitz Gibbon, "Italian Court Orders Getty to Return Bronze 'Victorious Youth' After Over 40 Years" (Dec. 30, 2018), https://culturalpropertynews.org/italian-court-orders-getty-to-return-bronze-victorious-youth-after-over-40-years/.

[30] Lee, *supra* note 10, at 33; Fincham, *supra* note 20, at 481–82.

[31] Lanciotti, *supra* note 4, at 304.

[32] *Id.* In an earlier ruling from the same case, the judge ruled that the Italian tribunal had jurisdiction to hear the case and that Italian law should be applied.

[33] Chechi, *supra* note 3.

[34] *Id.*

additional evidence submitted by the prosecutor who filed the case,[35] and the Bronze's decades-long display at the Getty, the case had not closed. The legal rulings began to favor the Bronze's repatriation.

The prosecutor again sought to indict and prosecute Barbetti, Barbetti's associates, and Herzer for conspiracy to illegally export the sculpture and requested its forfeiture. The same criminal charges had been dismissed in 2007, but the prosecutor appealed and won a forfeiture order in front of a new magistrate judge two years later. This ruling was surprising because the first magistrate judge dismissed the criminal counts and the accessory forfeiture request as a pretense "to obtain a confiscation order for the Bronze."[36] The suit may have been revitalized due to additional evidence or new defendants. But according to the English translation of the June 2018 ruling by the Pesaro tribunal, the lower court was permitted to consider the facts surrounding the forfeiture as part of its mandate to "resolve … in an interlocutory manner any issue from which the decision depends. . . ."[37] This ruling was based on Italian procedural rules permitting forfeiture "where the crime that grounds it has been excluded by the trial judge or it has been declared

[35] Edgar Tijhuis, "A History of the Statue of the Victorious Youth – Comparing the Getty's Timeline with Italy's," Association for Research into Crimes against Art (Dec. 9, 2018), http://www.artcrimeresearch.org/2018/12/09/a-history-of-the-statue-of-the-victorious-youth-comparing-the-gettys-timeline-with-italys/.

[36] Lee, *supra* note 10, at 33–34 (citing the 2007 Dismissal Order, which stated: "it is unquestionable that the criminal offenses envisaged and that can be envisaged have long become statute-barred as the events date back to the sixties and the seventies. What evidently led [Le Cento Cittá] to file a petition is the possibility of obtaining a confiscation order for the [Bronze].")

[37] Order of Forfeiture at 20 (June 8, 2018).

extinguished either for death of the defendant or by statute of limitation,"[38] as was the case in the Victorious Youth proceedings.

The June 2018 order from the Pesaro court significantly deviated from previous court rulings. It decided that where the Bronze was found was mostly irrelevant and focused on a provision of the Italian Code of Navigation, noting that "[O]nce the object was brought aboard the ship [marked with an Italian flag] it became in any case subject to the Italian laws on the protection of cultural objects and the finders had a duty to report the find to the exportation office to obtain a possible authorization … for its temporary importation. . . ."[39]

The Pesaro court found that the Bronze was an asset of Italy's cultural heritage, that it was subject to Italian patrimony laws, and that the "Getty Museum did not have a valid ownership title over the good before its unlawful exportation and it also lacked [another] condition for enforceability of title."[40] The court also upheld the lower court's finding that the Getty failed to perform the requisite diligence to be considered a good-faith buyer,[41] which was significant because of legal prohibitions on the forfeiture of a cultural artifact if the current possessor bought the object in good faith. Ultimately, the Pesaro court affirmed the lower court's decision, "deeming

[38] *Id.* at 18.

[39] *Id.* at 27.

[40] *Id.* at 30.

[41] *Id.* at 31–45. Court records show that the Getty's 1977 purchase of the Bronze included legal documentation produced as part of the German investigations authorizing Herzer to sell the statue and other expert opinions on title, historical information, and ongoing proceedings. The information received by the Getty Trustees was a substantial issue in the recent forfeiture proceedings and the sculpture's sale and export has led to conflicting versions of the level of diligence done by the Getty. It is clear, however, that the Getty partially relied on the recommendation from the German authorities in its push to retain the Bronze.

the forfeiture … the necessary action to allow the Italian State to reacquire the availability of the object which has been illegally removed from its non-disposable patrimony and unlawfully detained by the J.P. Getty Museum."[42]

Neither an explanatory statement nor an English translation of the November 2018 confirmation order was immediately available, but presumably the Court of Cassation upheld the order with little modification, as the Court of Cassation is "not tasked with re-examining the entire body of evidence in a given case."[43]

The Getty has few options in Italian court moving forward. The Court of Cassation definitively ruled that the Bronze is part of the Italian patrimony and was subject to export requirements that were ignored by multiple parties. Further, the Court upheld the findings that the Getty was not a good-faith buyer because the Trustees ignored significant historical details, ignored Getty's requests for supplementary documentation, and hired self-interested experts to evaluate the sale's legality. The Trustees also haphazardly verified its provenance despite knowing the initial sellers were indicted for handling a stolen object.

3. Enforcing the Forfeiture Order in the United States

With this judgment in hand, Italy's next legal step is to seek recognition of the forfeiture judgment by U.S. authorities and U.S. federal courts.[44] Italy has several ways it can

[42] *Id.* at 45.

[43] Lynda Albertson, "The Statue of a Victorious Country: Judge issues a long awaited ordinance on the fate of the 'Getty' Bronze," Association for Research into Crimes against Art (June 9, 2018), http://art-crime.blogspot.com/2018/06/the-statue-of-victorious-country-judge.html.

[44] The Bronze may be transferred to Italy as part of a settlement between Italian authorities and the Getty. But the uncooperative history between Italy and the Getty renders this unlikely and any enforcement request is almost certain to reach federal court. Separately, Italian officials have

try to enforce the forfeiture order in the United States. This section discusses enforcement under international law, through a MLAT, and under the NSPA, as well as Italy's likelihood of success with each option.

*a. International Law*

No customary international law "obliges a State to return cultural property claimed by another State which could be applied [to the dispute over the Bronze]."[45] The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("Convention") is the only relevant treaty to which both Italy and the United States are parties. However, the United States is unlikely to cooperate if the Convention is invoked. The Convention was implemented through the 1983 Convention on Cultural Property Implementation Act ("CPIA"), but the U.S. legislature restricted the Convention's application to cultural property exported "after the entry into force of th[e] Convention" and "stolen from [a museum or similar institution]."[46] The Bronze was not exported until after 1970 and was not stolen from a covered institution. Therefore, the United States has no international legal obligation to return the Victorious Youth. The November 2018 Court of Cassation ruling does not change that conclusion.

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previously threatened the Getty with a cultural embargo until the Bronze and other objects are returned. This threat emerged from the demand for tens of other objects during the True trial, but the Getty returned to negotiations only once the parties agreed to exclude the Bronze from discussions. *See* Fincham, *supra* note 20, at 482. Another threat of embargo would probably not impact the Getty's position.

[45] Lanciotti, *supra* note 4, at 317.

[46] 1983 Convention on Cultural Property Implementation Act (CPIA), Publ. L. No. 97-466, 96 Stat. 2329 (1983), current version at 19 U.S.C. para 2617.

*b. 2006 MLAT*

Dr. Derek Fincham, Professor of Law at South Texas College of Law, argues that Italy can use its MLAT with the United States to repatriate the Victorious Youth. "MLATs are bilateral agreements which provide for the sharing of information and evidence related to transnational criminal investigations."[47] The Department of Justice ("DOJ") is responsible for communicating under the relevant MLAT, which was signed in 2006.[48] Article 18 of the MLAT provides that Italy and the United States will "assist each other to the extent permitted by their respective laws in the seizure, immobilization and forfeiture of the fruits and instrumentalities of [criminal] offenses."[49] The United States has adhered to mutual legal assistance and cooperated with Italian Letters Rogatory Requests in the past concerning illegal exportation of cultural artifacts and might assist Italian authorities in the case of the Bronze.[50]

This approach also has problems. First, the MLAT compels the parties to cooperate in criminal matters and it is unlikely the United States would help Italy in a forfeiture claim. While conceivable the United States may assist as a matter of comity, the claim against the Bronze is precarious and the United States has its own cultural interests at stake. Second, the Getty would surely contest any forfeiture action brought by the U.S. Attorney's Office and

[47] Fincham, *supra* note 20, at 487.

[48] *Id.*

[49] Mutual Legal Assistance Agreement with the European Union, U.S.-It., May 3, 2006, T.I.A.S. 10-201.36.

[50] *See* Fincham, *supra* note 20, at 490–91 (discussing the transnational forfeiture of an Italian gold phiale).

argue against forfeiture and confiscation. And of course, the United States must comply with a request for assistance only if the request is consistent with domestic law.[51]

*c. NSPA*

Lastly, the judgment may also be enforced through the NSPA.[52] The NSPA "prohibits the transportation in interstate or foreign commerce of any goods with a value of $5,000 or more with the knowledge that they were illegally obtained, and prohibits the 'fencing' of such goods."[53] The NSPA also permits "foreign countries' cultural patrimony legislation to be effectively enforced within U.S. territory by U.S. courts,"[54] but foreign governments have a high burden of proof. They must "demonstrate that the statue is considered stolen under U.S. law, that it was discovered within the Italian territories, and that Italy's law unequivocally vests ownership of such object to the State."[55] There is also a heavy burden to "prove that the current holder of the cultural property knew that it had been stolen."[56]

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[51] Lanciotti, *supra* note 4, at 325–26.

[52] Italian officials might also seek enforcement via the Abandoned Shipwreck Act, 43 U.S.C. § 2105 (2006), and the Archaeological Resources Protection Act, 16 U.S.C. § 470gg(b) (2006). These laws are not analyzed in this essay.

[53] A Summary of the National Stolen Property Act of 1934, 18 U.S.C. §§ 2314 *et seq*. https://coast.noaa.gov/data/Documents/OceanLawSearch/Summary%20of%20Law%20-%20National%20Stolen%20Property%20Act.pdf?redirect=301ocm.

[54] *Id.*

[55] Chechi, *supra* note 3, at n. 14; *see also* Lynda Albertson, "Italy's Court of Cassation rejects the J. Paul Getty Museum's appeal against the lower court ruling on the Getty Bronze", Association for Research into Crimes Against Art (Dec. 4, 2018), https://art-crime.blogspot.com/2018/12/italys-court-of-cassation-rejects-j.html.

[56] Lanciotti, *supra* note 4, at 323 n. 102 (citing *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977).

Writing Sample
Max Romanow

While generally undisputed that the Bronze was stolen by fishermen off the coast of Fano and that the Getty has knowledge of this, Italy may have more trouble proving the sculpture was discovered in Italian territory, as this fact was previously rejected by the Court of Cassation in 1968 and since dismissed in legal opinions by Italian lawyers and export officials.[57] But the requirement that Italy's law unequivocally vests ownership of the Bronze to the State might be satisfied by the 2018 Pesaro court ruling, which held that Italian maritime navigation law covered the fishermen's discovery and that the location of discovery was irrelevant.[58] So whether the forfeiture order can be successfully enforced under the NSPA may turn on whether Italy can prove the Victorious Youth was discovered in Italian territory. The Getty clearly understands this, as its public statements repeatedly assert the Bronze was not found in Italian waters.

4. Conclusion

The Bronze will probably not be returned to Italy unless new facts emerge or the United States undergoes a significant political shift. This dispute has lasted for over 50 years with little cooperation from either the United States or the Getty. And enforcing the forfeiture order will be challenging despite the progress in Italian courts. The Getty will highlight the history of acquittals, the statute of limitations, the conclusions from the German investigations, and the Italian high court's 1968 ruling. But Italy has the money and the public support for a legal fight in U.S. courts, and those courts are where the dispute is likely headed.

[57] Tijhuis, *supra* note 35.
[58] *Id.*

## Applicant Details

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| Date of JD/LLB | **June 1, 2022** |
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April 5, 2021

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, New York 10007

Dear Judge Liman:

I am writing to request your consideration of my application for a clerkship beginning in August of 2024. I am a third-year law student at the University of Pennsylvania; next year I will be working at Quinn Emanuel Urquhart & Sullivan, LLP in their New York office. In 2023, I will be clerking for Judge Harris Hartz in the 10th Circuit. I am interested in building on my future clerkship experience while also deepening the legal connections I have in New York. Furthermore, I would like to remain close to family in Long Island while also living in an area with a sizable Jewish community; as a result, a clerkship in the Southern District of New York is ideal for me.

During law school, I have developed a passion for trial litigation and the intersection between blockchain technologies and the law. As a research assistant for Professor Stephen Burbank, I honed my skills of conducting legal research, synthesizing material from multiple legal sources and academic disciplines, and providing analysis with clear conclusions. In that role, my research contributed to an article by Professor Burbank studying trends in the certification of class actions. This semester, I am building on that experience through an independent research project, the topic being decentralized autonomous organizations ("DAOs") and their potential to disrupt current frameworks of corporate governance, structure, and formation.

I enclose my resume, law school transcript, undergraduate transcript, and writing sample. Letters of recommendation from Professor Stephen B. Burbank (sburbank@law.upenn.edu, 508-246-8674), Professor Tobias Barrington Wolff (twolff@law.upenn.edu, 215-898-7471), and Professor Catherine T. Struve (cstruve@law.upenn.edu, 215-898-7068) are also included. Please let me know if any other information would be useful in your assessment of my application.

Thank you for your consideration.

Respectfully,

Seth Rosenberg